

## **The Code of Civil Procedure Act 1908 (excerpts)**

WHEREAS it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature; It is hereby enacted as follows: –

### **PRELIMINARY**

1.-(1) This Act may be cited as the Code of Civil Procedure, 1908.

(2) It shall come into force on the first day of January 1909.

1[(3) It extends to the whole of Pakistan.]

2. In this Act, unless there is anything repugnant in the subject or context,-

(1) "Code" includes rules:

(2) "decree" means the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties which regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint 2[the determination of any question within section 144 and an order under rule 60, 98, 99, 101, or 103 of Order XXI] but shall not include;

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation. – A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;

(3) "Decree-holder" means any person in whose favour a decree has been passed or an order capable of execution has been made:

(4) "District" means the local limits of the jurisdiction of a principal civil Court of original jurisdiction (hereinafter called a "District Court"), and includes the local limits of the ordinary original civil jurisdiction of a High Court:

(5) "Foreign Court" means a Court situate beyond the limits of 1[Pakistan] which has no authority in 1[Pakistan] and is not established or continued by 2[the Central Government 3\*\*\*]:

(6) "Foreign judgment" means the judgment of a foreign Court:

(7) "Government Pleader" Includes any officer appointed by the 4(Provincial Government] to perform all or any of the functions expressly imposed by this Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader :

(8) "Judge" means the presiding officer of a civil Court:

(9) "Judgment" means the statement given by the Judge of the grounds of a decree or order:

(10) "Judgment-debtor" means any person against whom a decree has been passed or an order capable of execution has been made:

(11) "Legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued:

(12) "Mesne profits" of property means those profits which the person in wrongful profession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits but shall not include profits due to improvements made by the person in wrongful possession:

(13) "Movable property" includes growing crops:

(14) "Order" means the formal expression of any decision of a civil Court which is not a decree:

(15) "Pleader" means any person entitled to appear and plead for another in Court, and includes an advocate, a civil and an attorney of a High Court:

(16) "Prescribed" means prescribed by rules:

(17) "Public officer" means a person falling under any of the following descriptions, namely:

(a) every Judge;

(b) [every person in the service of Pakistan].<sup>1</sup>

(c) every commissioned or gazetted officer in the military,  
<sup>2</sup>[naval or airy] forces of <sup>3</sup>[Pakistan while in the service of the State];

(d) every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, – or to preserve order, in the Court, and every person especially authorized by a Court of Justice to perform any of such duties;

(e) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

(f) every officer of <sup>4</sup>[the <sup>5</sup>[Government] ] whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

(g) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of <sup>4</sup>[the <sup>5</sup>[Government]], or to make any survey, assessment or contract on behalf of <sup>1</sup>[the <sup>2</sup>[Government]]  
<sup>1</sup>. or to execute any revenue-process, or to investigate, or to report on, any matter affecting the pecuniary interests of <sup>1</sup>[the <sup>2</sup>[Government]], or to make, authenticate or keep any document relating to the pecuniary interests of <sup>1</sup>[the [Government] ] or to prevent the infraction of any law for the protection of the pecuniary interest of <sup>1</sup>[the <sup>2</sup>[Government] ]; and

(h) every officer in the service or pay of <sup>1</sup>[the <sup>2</sup>[Government]], or remunerated by fees or commission for the performance of any public duty:

(18) "Rules" means rules and forms contained in the First Schedule or made under section 122 or section 125.

(19) "Share in a corporation" shall be deemed to include stock, debenture-stock, debentures or bonds; and

(20) "Signed", save in the case of a judgment or decree, includes stamped.

3. For the purposes of this Code, the District Court is subordinate to the High Court, and every civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court.

4.-(1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.

(2) In particular and without prejudice to the generality of the proposition contained in subsection (1), nothing in this Code shall be deemed to limit or otherwise

affect any remedy which a landholder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land.

5.-(1) Where any Revenue Courts are governed by the provisions of this Code in those matters of procedure upon which any special enactment applicable to them is silent, the 3[Provincial Government]4 \* \* \* may, by notification in the 5(official Gazette), declare that any portions of those provisions which are not expressly made applicable by this Code shall not apply to those Courts, or shall only apply to them with such modifications as the 3[Provincial Government]\*\* may prescribe.

(2) "Revenue Court" in subsection (1) means a Court having jurisdiction under any local law to entertain suits or other proceedings relating to the rent, revenue or profits of land used for agricultural purposes, but does not include a civil Court having original jurisdiction under this Code to try such suits or proceedings as being suits or proceedings of a civil nature.

6. Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

7. The following provisions shall not extend to Courts cons- Provincial Small Cause Courts Act, 1887, 1\*\*\* or to Courts exercising the jurisdiction of a Court of Small Causes Courts 3[under the said Act], that is to say,-

(a) So much of the body of the Code as relates to-

(i) Suits excepted from the cognizance of a Court of Small Causes;

(ii) The execution of decrees in such suits;

(iii) The execution of decrees against immovable property; and

(b) The following sections, that is to say,-

sections 9,

sections 91 and 92.

sections 94 and 95 [far as they authorize or relate to-

(i) orders for the attachment of immovable property,

(ii) injunctions.

(iii) the appointment of a receiver of immovable property, or

(iv) the interlocutory orders referred to in clause (e) of

section 94] and

sections 96 to 112 and 115.

8.-Omitted by the 4.0, 1949.

[1908: ACT V]

Civil Procedure

(Part I.- Suits in General. Jurisdiction of the Courts and Res judicata)

PART I

SUITS IN GENERAL

JURISDICTION OF THE COURTS AND Res Judicata

9. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation.- A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

10. No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where

such suit is pending in the same or any other Court in 1[Pakistan] having jurisdiction to grant the relief claimed, or in any Court beyond the limits of 1[Pakistan] established or continued by 2[the Central Government 3\*\*\*] and having like jurisdiction, or before 4[the Supreme Court].

Explanation.- The pendency of a suit in a foreign Court does not preclude the Courts in 1[Pakistan] from trying a suit founded on the same cause of action.

11. No Court shall try suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.- The expression "former suit" shall denote a Suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.- For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.-The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly, or impliedly by the other.

Explanation IV.-Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue -in such suit.

Explanation V.-Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI.-Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the person so litigating.

12. 1[(1)] Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court to which this Code applies.

1[(2)] Where a person challenges the validity of a judgment, decree or order on the plea of fraud, misrepresentation or want of jurisdiction,

he shall seek his remedy by making an application to the Court which passed the final judgment, decree or order and not by a separate suit.]

13. A foreign judgment shall be conclusive as to any matter when thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except;

(a) Where it has not been pronounced by a Court of competent jurisdiction;

(b) Where LI has not been given on the merits of the case;

(c) Where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the law of 2[Pakistan] in cases in which such law is applicable;

(d) Where the proceedings in which the judgment was obtained are opposed to natural justice;

(e) Where it has been obtained by fraud;

(f) Where it sustains a claim founded on a breach of any law in force in 2[Pakistan].

14. The Court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction.

15. Every suit shall be instituted in the Court of the lowest grade competent to try it.

16. Subject to the pecuniary or other limitations prescribed by any law, suits;

(a) for the recovery of immovable property- with or without rent or profits;

(b) for the partition of Immovable property;

(c) for foreclosure, sale or redemption In the case of a mortgage of or charge upon immovable property,

(d) for the determination of any other right to or Interest in immovable property;

(e) for compensation for wrong to immovable property,

(f) for the recovery of movable property actually under distraint or attachment;

shall be instituted in the Court within the local limits of whose jurisdiction the property is situated '[, or, in the case of suits referred to in- clause (c), at, at the place where the cause of action his wholly or partly arisen:

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Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate 1[or, in the case of suits referred to in clause (c), at the place where the cause of action has wholly or partly arisen) or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation.- In this section "property" means property situate in 2[Pakistan].

17. Where a suit is to obtain relief respecting, or compensation for wrong to immovable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate: -

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.

18.-(1) Where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immovable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon 1proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the-local limits of its jurisdiction:

Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise jurisdiction.

(2) Where a statement has not been recorded under subs section (1), and an objection is taken before an appellate or revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the appellate or revisional Court shall not allow the objection unless in its opinion there was, at the time of the institution of the suit, no reasonable ground for uncertainty as to the Court having jurisdiction with respect thereto and there has been consequent failure of justice.

19. Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted -at the option of the plaintiff in either of the said Courts.

#### Illustrations

(a) A, residing in [Karachi], beats B in [Quetta].  
B may sue A either in [Quetta] or [Karachi].

(b) A, residing in [Karachi] published in [Quetta] statements defamatory of B. B may sue A either in [Quetta] or in [Karachi].

20. Subject to the limitations aforesaid, every suit shall be in a Court within the local limits of whose jurisdiction.

(a) the defendant-, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain;  
or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either of the Court is given, or the defendants who reside, or carry on business, or personally work as aforesaid, acquiesce in such institution;  
or

(c) the cause of action, wholly or in part, arises.

Explanation I.- Where a person has- a one place and also a temporary residence shall be deemed to reside at both places in action arising at the place where he residence.

Explanation II.-A corporation shall be deemed to carry on business at its sole or principal office in [Pakistan] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

#### Illustrations

(a) A is a tradesman in [Lahore]. B carries on business in [Karachi]. B, by his agent in [Lahore], buys goods of A and requests A to deliver them to the [Pakistan International Airways]. A delivers the goods accordingly in [Lahore]. A may sue B for the price of the goods either in

[Lahore] where the cause of action has arisen or in [Karachi] where B carries on business.

(b) A resides at [Murree], B at [Lahore], and C at [Karachi]. A, B and C being together at [Bahawalpur] B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at [Bahawalpur], where the cause of action arose. He may also sue them at [Lahore], where B resides, or at [Karachi], where C resides: but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the Court.

21. No objection as to the place of suing shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement and unless there has been a consequent failure of justice.

22. Where a suit may be instituted in any one.- of two or more Courts and is instituted in one of such Courts, any defendant after notice to the other parties, may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to have the suit transferred to another Court, and the Court to which such application is made, after considering the objections of the other parties (if any), shall determine in which of the several Courts having jurisdiction the suit shall proceed.

23. (1) Where the several Courts having jurisdiction are subordinate to the same Appellate Court, an application under section 22 shall be made to the Appellate Court.

(2) Where such Courts are subordinate to different Appellate Courts but to the same High Court, the application shall be made to the said High Court.

(3) Where such Courts are subordinate to different High Courts, the application shall be made to the High Court within the local limits of whose jurisdiction the Court in which the suit is brought is situated.

24.-(1) On the application of any of the parties and after notice to the parties and after hearing such of them as may be heard, or of its own motion without such notice, the High Court or the District Court may at any stage-

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and

(i) try or dispose of the same; or

(ii) transfer the same for trial or subordinate to it and competent same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under subsection (1) the Court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of' this section, and Assistant Judges shall be deemed to District Court.

(4) The court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of' such suit, be deemed to be a Court of Small Causes,

124-A.-(1) Where any suit is transferred under section 22, or any suit, appeal or other proceeding is transferred or withdrawn under subsection (1) of section 24 on the application of a party, the Court ordering the transfer or withdrawal shall fix a date for the appearance of the parties before itself, if the., suit, appeal or other proceeding is to be tried or disposed of by itself, or before the Court to which the case is so transferred.

(2) Where any suit, appeal or other proceeding is transferred from one Court to another, otherwise than on the' application of a party, the parties thereto shall appear before the Court from which the suit, appeal or other proceeding is to be transferred, on the day already fixed for their appearance before that Court, and such Court shall then communicate the order of transfer to such parties and direct them to appear before the Court to which the suit, appeal or other proceeding is to be transferred, either on the same day, or on such earliest day as may be reasonable having regard to the distance at which the other Court is located.]”

25. 1\* \* \* \* \*

## **INSTITUTION OF SUITS**

26. Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.

## **SUMMONS AND DISCOVERY**

27. Where a suit has been duly instituted, a summons may defendants, be issued to the defendant to appear and answer the claim and may be served in manner prescribed.

28.-(1) A summons may be sent for service in another summons. Province to such Court and in such manner as may be prescribed by rules in force in that Province.

(2) The Court to which summons is sent shall, upon another receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue together with the record (if any) of its proceedings with regard thereto.

29. Summonses 2[and other processes] issued by any Civil or

Revenue Court situated 1[outside] 2[Pakistan] may be sent to the Courts 3[in] 4[Pakistan] and served as if they 5[were summonses] issued by such Courts:

6[Provided that the Courts issuing such summonses [or processes] have been established or continued by the authority of the Central Government or that the Provincial Government [of the Province in which such summonses or processes are] to be served has by notification in the official Gazette declared the provisions of this section to apply to 10[such Courts.]

30. Subject to such conditions and limitations as may be prescribed, the Court may, at any. time, either of its own motion or on the application of any party:

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(a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

(b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;

(c) order any fact to be proved by affidavit.

31. The provisions in sections 27, 28 and 29 shall apply to summonses to give evidence or to produce documents or other material objects.

32. The Court may compel the attendance of any person to whom a summons has been issued under section 30 and for that purpose may-

- (a) issue a warrant for his arrest;
- (b) attach and sell his property;
- (c) impose a fine upon him not exceeding [two thousand] rupees;
- (d) order him to furnish security for his appearance and in default commit him to [.....] prison.

### **JUDGMENT AND DECREE**

33. The Court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow.

### **INTEREST**

34.-(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

(2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie.

3[34.A,-(1)] Where the Court is of opinion that a suit was instituted with intent to avoid the payment of any public dues payable by the plaintiff or on his behalf, the Court may, while dismissing such suit, make an order for payment of interest on<sup>1</sup> such public dues at the rate, of two per cent. above the prevailing bank rate.

(2) Where the Court is of opinion that the recovery of any public dues from the plaintiff was unjustified, the Court may, while disposing of the suit, make an order for payment of interest on the amount recovered at the rate of two per cent., about the prevailing bank rate.

### **Explanation- In this section-**

(a) "bank rate" means the bank rate determined and made public under the provisions of the State Bank of Pakistan Act, 1956 (XXXIII of 1956); and

(b) "public dues" includes the dues of any bank owned by the Federal Government or of any corporation or undertaking owned or controlled by the Federal Government or a Provincial Government or of any local authority.]

[34.B. Where and in so far as a decree is for payment of money due to a banking company in repayment of a loan advanced by it, the Court shall, in the decree, provide for interest or return, as the case may be, on the judgment debt from the date of decree till payment-

(a) In the case of interest-bearing loans, for interest at the contracted rate or at the rate of two percent above the bank rate, whichever is the higher;

(b) In the case of loans given on the basis of markup in price, lease, hire-purchase or service charges, for the contracted rate of mark-up, rental, hire or service charges, as the case may be, or at the latest rate of the banking company for similar loans, whichever is the higher; and

(c) in the case of loans given on the basis of participation in profit and loss, for return at such rate, not being less than the annual rate of profit for the preceding six months paid by the banking company on term deposits of six months, accepted by it on the basis of participation in profit and loss, as the Court may consider just and reasonable in the circumstances of the case, keeping in view the profit-sharing agreement entered into between the banking company and the judgment-debtor when the loan was contracted.

Explanation.-(1) In this section in clause (a), "bank rate" has the same meaning as in section 34-A].

## COSTS

35.-(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of an incident to all suits shall be in the discretion of the Court, and the Courts shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers.

(2) Where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing.

(3) The Courts may give interest on costs at any rate not exceeding six percent per annum, and such interest shall be added to the Costs and shall be recoverable as such.

[35-A.-(I) If in any suit or other proceeding 2[including an execution proceeding)], not being an appeal, any party objects to the claim or defence on the ground that the claim or defence or any part of it is, as against the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and if thereafter, as against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the. Court, if the objection has been taken at the earliest opportunity and if it is satisfied of the justice thereof, may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment to the objector by the party by whom such claim or defence has been put forward, of costs by way of compensation.

(2) No Court shall make any such order for the payment of an amount exceeding 3[twenty five thousand] rupees or exceeding the limits of its pecuniary jurisdiction, whichever amount is less;

Provided that where the pecuniary limits of the jurisdiction of any Court exercising the jurisdiction of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887, and not being a Court constituted under that Act are less than two hundred and fifty rupees, the High Court may empower such Court to award as costs under this section any amount not exceeding two hundred and fifty rupees and not exceeding those limits by more than one hundred rupees:

Provided further, that the High Court may limit the amount which any Court or class of Courts is empowered to award as costs under this section.

(3) No person against whom an order has been made under this section shall, by reason thereof, be exempted from any criminal liability in respect of any claim or defence made by him.

(4) The amount of any compensation awarded under this section in respect of a false or vexatious claim or defence shall be taken into account in any subsequent suit for damages or compensation in respect of such claim or defence.]

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## PART II

### EXECUTION

#### GENERAL

36. The provisions of this Code relating to the execution of decrees shall, so far as they are applicable, be deemed to apply to the execution of orders.

37. The expression "Court which passed a decree" or words to that effect, shall, in relation to the execution of decrees unless there is anything repugnant in the subject or context, be deemed to include,

(a) Where the decree to be executed has been passed in the exercise of appellate jurisdiction, the first instance, and

(b) Where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

38. A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.

39.-(1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court;

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

(b) if such person has not property within the Local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

(c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it; or

(d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

(2) The Court which passed a decree may of its own motion it for execution to any subordinate Court of competent Transfer of decree to Court in another Province. Result of execution proceedings to be certified.

40. Where a decree is sent for execution in another Province, it shall be sent to such Court and executed in such manner as may be prescribed by rules in force in that Province.

41. The Court to which a decree is sent for execution shall certify to the Court which passed it the fact of such execution, or

where the former Court fails to execute the same the circumstances attending such failure.

42.-1[(1)] The Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed Court in by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner ac if it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

(2) Without prejudice to the generality of the foregoing provision, the Court executing a decree sent to it shall have the following powers, namely:-

(a) power under section 39 to transfer the decree to another Court, if necessary;

(b) power under subsection (1) of section 50 to permit execution to proceed against the legal representatives of a deceased judgment-debtor;

(c) power under section 152 to correct clerical or arithmetical errors;

(d) power under rule 16 of Order XXI to recognize the assignment of a decree;

(e) power under sub-rule (2) of rule 50 of Order XXI to grant leave to a decree-holder to proceed against a person not already recognized as a partner in a firm in an execution proceeding against the firm;

(f) power under clause (b) of sub-rule (1) of rule 53 of Order XXI to give notice of attachment of decree passed by another Court.]

43. Any decree passed by a civil Court established in any 2[area] in 3[Pakistan] to which the provisions relating to execution do not extend [.....] may, lilt cannot he executed within the jurisdiction of the Court by which it was passed, be executed in manner herein provided within the jurisdiction of any Court in 5[Pakistan].

44.-[Omitted by Ordinance (27 of 1981), Second Sched., item 46(5)].

5(44.A.-(1) Where a certified copy of a decree of any of the superior Courts of the United Kingdom or any reciprocating territory has been filed in a District Court, the decree may be executed in 3[Pakistan] as if it had been passed by the District Court.

(2) Together with the certified copy of the decree shall be filed a certificate from such superior Court stating the extent,

if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.

(3) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13.

Explanation 1.-"Superior Court" with reference to the United Kingdom, means the High Court in England, the Court of Session in Scotland, the High Court in Northern Ireland, the Court of Chancery of the County Palatine of Lancaster and the Court of Chancery of the County Palatine of Durham.

Explanation 2.-"Reciprocating territory" means 1[the United Kingdom and such other country or territory as] the 3[Central Government) may, from time to time, by notification in the 3[official Gazette], declare [to be reciprocating territory for the purposes of this section; and "superior Courts", with reference to any such territory, means such Courts as may be specified in the said notification.

Explanation 3.-"Decree", with reference to a superior Court, means any decree or judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, and

(a) With reference to superior Courts in the United Kingdom, includes judgments given and decrees made in any Court in appeals against , such decrees or judgments, but

(b) In no case includes an arbitration award, even if such award is enforceable as a decree or judgment.]

45. Execution of decrees in foreign territory.-[Omitted by Ordinance (27 of 1981), Second Sched., item 46(5) ].

46.-(1) Upon the application of the decree-holder the Court which passed the decree may, whenever it thinks fit, issue a precept to any other Court which would be competent to execute such decree to attach any property belonging to the judgment-debtor and specified in the precept.

(2) The Court to which a precept is sent shall proceed to attach the property in the manner prescribed in regard to the attachment of property in execution of a decree:

Provided that no attachment under a precept shall continue for more than two months unless the period of attachment is extended by an order of the Court which passed the decree or unless before the determination of such attachment the decree has been transferred to the Court by which the attachment has been made and the decree-holder has applied for an order for the sale of such property.

### **QUESTIONS TO BE DETERMINED BY COURT EXECUTING DECREE**

47.-(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(2) The Court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit or a suit as a proceeding and may, if necessary, order payment of any additional court-fees.

(3) Where a question arises as to whether any person is or is representative of a party, such question shall, for the purpose of this section, be determined by the Court.

Explanation.- For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed, are parties to the suit.

### **LIMIT OF TIME FOR EXECUTION**

148....(1) Where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of [six] years from.

(a) the date of the decree sought to be executed, or

(b) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree.

(2) Nothing in this section shall be deemed-

(a) to preclude the Court from ordering the execution of a decree upon an application presented after the expiration of the said term of [six] years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within [six] years immediately before the date of the application;

or

(b) to limit or otherwise affect the operation of article 2[83 of the First Schedule to the Limitation Act, 1908].

#### TRANSFER FEES AND LEGAL REPRESENTATIVES:

49. Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.

50.-(1) Where a judgment-debtor dies before the decree has been fully satisfied;

the holder of the decree may apply to the Court which passed it to execute the same

against the legal Representative of the deceased.

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree holder, compel such legal Representative to produce such accounts as it thinks fit.

#### **PROCEDURE IN EXECUTION**

51.-Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder order execution of the decree-

(a) by delivery of any property specifically decreed;

(b) by attachment and sale or by sale without attachment of any property ;

(c) by arrest and detention in prison;

(d) by appointing a receiver; or

(e) in such other manner as the nature of the relief granted may require.

[Provided that 2[\*\*\*] execution by detention in prison shall not be ordered unless, after giving the judgment debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied:-

(a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,-.

(i) is likely to abscond or leave the local limits of the jurisdiction of the Court; or

(ii) has, after the institution of the decree was passed, dishonestly transferred, concealed, or removed any part committed any other act of to his property ; or

(b) that the judgment-debtor has, or has had date of the decree, the means to pay the decree or some substantial part thereof or neglects or has refused or neglected same ; or

(c) that the decree is for a sum for which the judgment debtor was bound in a fiduciary

capacity to account.

Explanation – In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree].

52.-(1) Where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property.

(2) Where no such property remains in the possession of the judgment-debtor and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment debtor to the extent of the property in respect of which he has failed so to satisfy the Court in the same manner as if the decree had been against him personally.

53. For the purposes of section 50 and section 52, property in the hands of a son or other descendant which is liable under Hindu law for the payment of the debt, of a deceased ancestor, in respect of which a decree has been passed, shall be deemed to be property of the deceased which has come to the hands of the son or other descendant as his legal representative.

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54. Where the decree is for the partition of an undivided estate assessed to the payment of revenue to [the Government] or for the separate possession of a share of such as estate, the partition of the estate or the separation

of the share shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estates.

## **ARREST AND DETENTION**

55.-(1) A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before the Court 3[which may make an order for his detention in prison to suffer simple imprisonment for a period not exceeding one year;]

Provided, firstly, that, for the purpose of making an arrest under this section, no dwelling house shall be entered after sunset and before sunrise;

Provided, secondly, that no outer-door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the officer authorized to make the arrest has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe the judgment-debtor is to be found;

Provided, thirdly, that if the room is in the actual occupancy of a woman who is not the Judgment debtor and who according to the customs of the country does not appear in public, the officer authorized to make the arrest shall give notice to her that she is at liberty to withdraw, and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, may enter the room for the purpose of making the arrest;

Provided fourthly, that, where the decree in execution of which a judgment-debtor is arrested, is a decree for the payment of

and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him;

(2) The 1[Provincial Government] may by notification in the 2[official Gazette], declare that any person or class of persons whose arrest might be attended with danger or inconvenience to the public shall not be liable to arrest in execution of a decree otherwise than in accordance with such procedure as may be prescribed by the [Provincial Government] in this behalf.

3[(3) A judgment-debtor detained in prison under sub section (1) shall not, merely by reason of undergoing such imprisonment, be discharged from his liability under the decree, but he shall not be liable

to be re-arrested under the decree in execution of which he was so detained in prison.]

56. Notwithstanding anything in this Part, the Court the arrest or detention in the 4[\* \*] prison execution of a decree for the payment of money.

57. [\* \* \* \* \*]

58. Every person detained in prison in execution of decree shall be released from such detention, before the expiry of the period of detention, if-

(a) the amount mentioned in the warrant for his detention is paid to the officer in charge of the prison; or

(b) the decree against him is otherwise fully satisfied; or

(c) the person on whose application he has been detained so requests;

Provided that he shall not be released from such detention without the order of the Court.]

59. [\* \* \* \* \*]

60. (1) The following property is liable to attachment and sale in execution of a decree, namely, lands houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all 4other saleable property, movable or immovable, belonging to the judgment-debtor, or over which or the profits of which. he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust of him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale, namely:-

(a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as. in accordance with religious usage, cannot be parted with any woman;

(b) tools of artisans arid, where the judgment-debtor is art agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce, or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;

(c) houses and other buildings (with the materials and the sizes thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him;

(d) books of accounts;

(e) a mere right to sue for damages ;

(f) any right of personal service ;

(g) stipends and gratuities allowed to 2[pensioners of the 3[Government], or payable out of any service family and the costs of the arrest to the officer arresting him, such officer shall at once release him.

(h) the wages of labourers and domestic servants, whether payable in money or

in kind;

(l) Salary to the extent of the first hundred rupees and one half the remainder;

Provided that where such salary is the salary of a 6[servant of the State] or a servant of a railway 7\* \* \* or local authority and the whole or any part of the portion of such salary liable to attachment has been under attachment, whether continuously or intermittently for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months and, where such attachment has been made in execution of one and the same decree, shall be finally exempt from attachment in execution of that decree ;]

(j) the pay and allowances of persons to whom the 8[Pakistan Army Act, 1952],

9\* \* \*applies]. [or of persons other than commissioned officers to whom the 1[Pakistan Navy Ordinance, 1961 (XXXV of 1961) applies];

(k) all compulsory deposits and other sums in or derived from any fund to which the

Provident Funds Act [1925], for the time being applies in so far as they are declared by the said Act not to be liable to attachment;

(l) any allowance forming part of the emoluments of any [servant of the State] or of any servant of a railway 4 \* \* \* or local authority which the [appropriate Government] may by notification in the [official Gazette] declare to be exempt from attachment, and any subsistence grant or

allowance made to 7[any such servant] while under suspension; (in) an expectancy of succession by survivorship or other, merely contingent or possible right or interest;

(n) A right to future maintenance;

(o) Any allowance declared by [any Pakistan law] to be exempt from liability to

attachment or sale in execution of a decree; and

(p) Where the judgment debtor is a person liable for the pays merit of land revenue,

any movable property which, under any law for the time being applicable to him,

is exempt from sale for the recovery of an arrear of such revenue.

[Explanation 1] The particulars mentioned in clauses (g), (h), (i), (j), (l) and (o) are exempt from attachment or sale whether before or after they are actually payable, [and in the case of salary other than salary of a [servant of the State] or a servant of a railway 1 \*\*\* or local authority the attachable portion thereof is exempt from attachment until it is actually payable].

2[Explanation 2.-In clauses (h) and (1), "salary" means the total monthly emoluments, excluding any allowance declared exempt from attachment under the provisions of clause (1), derived by a person from his employment whether on duty or on leave.]

3[Explanation 3 -.40 clause (I) "appropriate Government" means-

(i) As respects any 4[person] in the service of the Government, or any servant [of railway or] cantonment authority or the port authority of a port, the Central Government:

(iii) As respects any other 7[servant of the State] or a servant of any local authority, the Provincial Government].

(2) Nothing in this section shall be deemed-

to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land,

61. The [Provincial Government] \* \* may, by general or special order published in the 2fofficial Gazette], declare that such portion of agricultural produce, or of any class of agriculture produce, as may appear to the 10[Provincial Government] to be for the purpose of providing until the next harvest for the due cultivation of the land and for the support judgment-debtor and his family, shall, in the case of all turists or of any class of agriculturist be exempted from to attachment or sale in execution of a decree.

62. (1) No person executing any process under this directing or authorizing seizure

of movable property shall any dw1diling.house after sunset and before sunrise.

(2) No outer-door of a dwelling-house shall be broken open unl~ss such dwelling-house is in the occupancy of the judgment. debtor and he refuses or in any way prevents access thereto, but when the person executing any such process has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe any such property to be.

(3) Where a room in a dwelling-house is in the actual occuo pancy of a woman who, according to the customs of the country does not appear in public, the person executing the process shall give notice to such woman that she is at liberty to withdraw ; and, after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter such room for the purpose, of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

63.-41) Where property not in the custody of any Court is under attachment in execution of decrees of more Courts than one, the Court which shall receive or realize such property and shall determine any claim thereto and any objection to the attachment thereof shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.

(2) Nothing in this section shall be deemed to invalidate any proceeding taken by a Court executing one of such decrees.

64. Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment.

Explanation: For the purposes of this section, claims enforce under an attachment include claims for the rateable distribution of assets.

65. Where immovable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.

66. (1) No suit shall be maintained against any person claiming title under a purchase certified by the Court in such manner as may be prescribed on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims.

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner,

67.—(1) The 2[Provincial Government] may by notification in the 4[official Gazette], make rules for any local area imposing conditions in respect of the sale of any class of interest in land in executing of decrees for the payment of money, where such interests are so uncertain or undetermined as in the opinion of the 2[Provincial Government], to make it impossible to fix their value.

[(2) When on the date on which this Code came into operation in any local area, any special rules as to sale of land in execution of decrees were in force therein, the 2[Provincial Government] may, by notification in the 4[official Gazette] declare such rules to be in force, or may, by a like notification, modify the same.

Every notification issued in the exercise of the powers conferred by this subsection shall set out the rules so continued or modified]

## **DELEGATION TO COLLECTOR OF POWER TO EXECUTE DECREES**

### **AGAINST IMMOVABLE PROPERTY**

68. The 2[Provincial Government] may declare by notification in the 4[official Gazette] that in any local area the execution of decrees in cases in which a Court has ordered any immovable property to be sold, or the execution of any particular kind of such decrees, or the execution of decrees ordering the sale of any particular kind of, or interest in immovable property, shall be transferred to the Collector.

69. The provisions set forth in the Third Schedule shall apply to all cases in which the execution of a decree has been transferred under the last preceding section.

70. (l) The 2[Provincial Government] may make rules consistent with the aforesaid provisions-

(a) for the transmission of the decree from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same, and for re-transmitting the decree from the Collector to the Court;

(d) By appointing a receiver; or

(e) In such other manner as the nature of the relief granted may require.

[Provided that 2[\*\*\*] execution by detention in prison shall not be ordered unless, after giving the judgment debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied:-

(a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,-.

(i) is likely to abscond or leave the local limits of the jurisdiction of the Court; or

(ii) has, after the institution of the decree was passed, dishonestly transferred, concealed, or removed any part committed any other act of to his property ; or

(b) that the judgment-debtor has, or has had date of the decree, the means to pay the decree or some substantial part thereof or neglects or has refused or neglected same ; or

(c) that the decree is for a sum for which the judgment debtor was bound in a fiduciary

capacity to account.

Explanation – In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which by or under any law or custom having the force of 1~w for the time being in force, is exempt from attachment in execution of the decree].

52.-(l) Where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property.

(2) Where no such property remains in the possession of the judgment-debtor and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment debtor to the extent of the property in respect of which he has failed so to satisfy the Court in the same manner as if the decree had been against him personally.

53. For the purposes of section 50 and section 52, property in the hands of a son or other descendant which is liable under Hindu law for the payment of the debt, of a deceased ancestor, in respect of which a decree has been passed, shall be deemed to be property of the deceased which has come to the hands of the son or other descendant as his legal representative.

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54. Where the decree is for the partition of an undivided estate assessed to the payment of revenue to '[the '[Government]) or for the separate possession of a share of such an estate, the partition of the estate or the separation of the share shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estates.

## **ARREST AND DETENTION**

55.-(1) A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before the Court 3[which may make an order for his detention in prison to suffer simple imprisonment for a period not exceeding one year;]

Provided, firstly, that, for the purpose of making an arrest under this section, no dwelling house shall be entered after sunset and before sunrise;

Provided, secondly, that no outer-door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the officer authorized to make the arrest has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe the judgment-debtor is to be found;

Provided, thirdly, that if the room is in the actual occupancy of a woman who is not the Judgment debtor and who according to the customs of the country does not appear in public, the officer authorized to make the arrest shall give notice to her that she is at liberty to withdraw, and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, may enter the room for the purpose of making the arrest;

Provided fourthly, that, where the decree in execution of which a judgment-debtor is arrested, is a decree for the payment of money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him;

(2) The [Provincial Government] may by notification in the 2[official Gazette], declare that any person or class of persons whose arrest might be attended with danger or inconvenience to the public shall not be liable to arrest in execution of a decree otherwise than in accordance with such procedure as may be prescribed by the [Provincial Government] in this behalf.

3[(3) A judgment-debtor detained in prison under sub section (1) shall not, merely by reason of undergoing such imprisonment, be discharged from his liability under the decree, but he shall not be liable to be re-arrested under the decree in execution of which he was so detained in prison.]

61. Notwithstanding anything in this Part, the Court the arrest or detention in the 4[\* \*] prison execution of a decree for the payment of money.

62. [\* \* \* \* \*]

63. Every person detained in prison in execution of decree shall be released from such detention, before the expiry of the period of detention, if-

(a) the amount mentioned in the warrant for his detention is paid to the officer in charge of the prison; or

(b) the decree against him is otherwise fully satisfied; or

(c) the person on whose application he has been detained so requests;

Provided that he shall not be released from such detention without the order of the Court.]

64. [\* \* \* \* \*]

65. (1) The following property is liable to attachment and sale in execution of a decree, namely, lands houses or other buildings, goods, money, bank-notes, cheques, bills

of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all 4other saleable property, movable or immovable, belonging to the judgment-debtor, or over which or the profits of which. be

has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust of him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale, namely:-

(a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as. in accordance with religious usage, cannot be parted with any woman;

(b) tools of artisans and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce, or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;

(c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him;

(d) books of accounts;

(e) a mere right to sue for damages ;

(f) any right of personal service ;

(g) stipends and gratuities allowed to 2[pensioners of the 3[Government], or payable out of any service family and the costs of the arrest to the officer arresting him, such officer shall at once release him.

(i) the wages of labourers and domestic servants, whether payable in money or

in kind;

(l) Salary to the extent of the first hundred rupees and one half the remainder;

Provided that where such salary is the salary of a 6[servant of the State] or a servant of a railway 7\* \* \* or local authority and the whole or any part of the portion of such salary liable to attachment has been under attachment, whether continuously or intermittently for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months and, where such attachment

has been made in execution of one and the same decree, shall be finally exempt from attachment in execution of that decree ;]

(k) the pay and allowances of persons to whom the 8[Pakistan Army Act, 1952],

9\* \* \*applies]. [or of persons other than commissioned officers to whom the 1[Pakistan Navy Ordinance, 1961 (XXXV of 1961) applies];

(k) all compulsory deposits and other sums in or derived from any fund to which the

Provident Funds Act [1925], for the time being applies in so far as they are declared by the said Act not to be liable to attachment;

(l) any allowance forming part of the emoluments of any [servant of the State] or of any servant of a railway 4 \* \* \* or local authority which the [appropriate Government] may by notification in the [official Gazette] declare to be exempt from attachment, and any subsistence grant or allowance made to 7[any such servant] while under suspension; (in) an expectancy of succession by survivorship or other, merely contingent or possible right or interest;

(n) A right to future maintenance;

(o) Any allowance declared by [any Pakistan law] to be exempt from liability to

attachment or sale in execution of a decree; and

(p) Where the judgment debtor is a person liable for the pays merit of land revenue,

any movable property which, under any law for the time being applicable to him,

is exempt from sale for the recovery of an arrear of such revenue.

[Explanation 1] The particulars mentioned in clauses (g), (h), (i), (j), (l) and (o) are exempt from attachment or sale whether before or after they are actually payable, [and in the case of salary other than salary of a [servant of the State] or a servant of a railway 1 \*\*\* or local authority the attachable portion thereof is exempt from attachment until it is actually payable].

2[Explanation 2.-In clauses (h) and (1), "salary" means the total monthly emoluments, excluding any allowance declared exempt from attachment under the provisions of clause (1), derived by a person from his employment whether on duty or on leave.]

3[Explanation 3 -.40 clause (I) "appropriate Government" means-

(i) As respects any 4[person] in the service of the Government, or any servant [of railway or] cantonment authority or the port authority of a port, the Central Government:

(iii) As respects any other 7[servant of the State] or a servant of any local authority, the Provincial Government].

(2) Nothing in this section shall be deemed-

to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land,

61. The [Provincial Government] \* \* may, by general or special order published in the 2[official Gazette], declare that such portion of agricultural produce, or of any class of agriculture produce, as may appear to the 10[Provincial Government] to be for the purpose of providing until the next harvest for the due cultivation of the land and for the support judgment-debtor and his family, shall, in the case of all turists or of any class of agriculturist be exempted from to attachment or sale in execution of a decree.

62. (1) No person executing any process under this directing or authorizing seizure

of movable property shall any dw1diling.house after sunset and before sunrise.

(2) No outer-door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment. debtor and he refuses or in any way prevents access thereto, but when the person executing any such process has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe any such property to be.

(3) Where a room in a dwelling-house is in the actual occupancy of a woman who, according to the customs of the country does not appear in public, the person executing the process shall give notice to such woman that she is at liberty to withdraw ; and, after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter such room for the purpose, of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

63.-41) Where property not in the custody of any Court is under attachment in execution of decrees of more Courts than one, the Court which shall receive

or realize such property and shall determine any claim thereto and any objection to the attachment thereof shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.

(2) Nothing in this section shall be deemed to invalidate any proceeding taken by a Court executing one of such decrees.

64. Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment.

Explanation: For the purposes of this section, claims enforce under an attachment include claims for the rateable distribution of assets.

65. Where immovable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.

66. (1) No suit shall be maintained against any person claiming title under a purchase certified by the Court in such manner as may be prescribed on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims.

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner,

67.—(1) The 2[Provincial Government] may by notification in the 4[official Gazette], make rules for any local area imposing conditions in respect of the sale of any class of interest in land in executing of decrees for the payment of money, where such interests are so uncertain or undetermined as in the opinion of the 2[Provincial Government], to make it impossible to fix their value.

[(2) When on the date on which this Code came into operation in any local area, any special rules as to sale of land in execution of decrees were in force therein, the 2[Provincial Government] may, by notification in the 4[official Gazette] declare such rules to be in force, or may, by a like notification, modify the same.

Every notification issued in the exercise of the powers conferred by this subsection shall set out the rules so continued or modified]

## **DELEGATION TO COLLECTOR OF POWER TO EXECUTE DECREES**

### **AGAINST IMMOVABLE PROPERTY**

71. The 2[Provincial Government] may declare by notification in the 4[official Gazette] that in any local area the execution of decrees in cases in which a Court has ordered any immovable property to be sold, or the execution of any particular kind of such decrees, or the execution of decrees ordering the sale of any particular kind of, or interest in immovable property, shall be transferred to the Collector.

(3) Nothing in this section affects any right of [the 2[Government]].

### **RESISTANCE TO EXECUTION**

[74.-(1) Where the Court is satisfied that the holder of a decree for the possession of property or a purchaser of property sold in execution of a decree has been resisted or obstructed in obtaining possession of the property by the judgment-debtor or any other person on his behalf and that such resistance or obstruction was without any just cause, the Court may, at the instance of the decree holder or the purchaser, order the judgment-debtor or such other person to undergo simple imprisonment for a term which may extend to thirty days and may further direct that the decree-holder or the purchaser be put into possession of the property.

(2) Notwithstanding anything contained in subsection (1), where a judgment-debtor or my other person resists or obstructs the execution of a decree, the Court may direct the officer in charge of the police-station within whose jurisdiction the judgment-debtor or such other person resides or where the property to which the decree relates is situate to provide, the necessary police assistance for the execution of the decree.]

### **INCIDENTAL PROCEEDINGS**

#### **COMMISSIONS**

75. Subjéctto such conditions .and limitations as may. be prescribed the Court may issue a commission-..

(a)to examine any person ;

(b)to make a local investigation;

(c)to examine or adjust accounts; or

(d) to make a partition.

76. (1) A commission for the examination of any person Commission~ may be issued to any Court (not being a High Court) situate in a Province other than Province in which the Court of issue is situate and having jurisdiction in the place in which the person to be examined resides.

(2) Every Court receiving a commission for the examination of any person under subsection (1) shall examine him or cause him to be examined pursuant thereto, and the commission, when it has been duly executed, shall be returned together with the evidence taken under it to the Court from which it was issued, unless the order for issuing the commission has otherwise directed in which case the commission shall be returned in terms of such order.

77. In lieu of issuing a commission the Court may issue a Letter of~ letter of request to examine a witness residing at any place not request within [Pakistan].

78.2 [Subject to such conditions and limitations as may be prescribed], the provisions as to the execution and return of come by foreign missions for the examination of witnesses shall apply to commission issued by [or at the instance of]

(a) Courts situate beyond the limits of 2 [Pakistan and established] or continued by the authority of 3\* \* \* 4 [the

Central Government5 \* \* \*], or

(b) \* \* \*

[(c) Courts of any State or country outside Pakistan.]

## **PART IV**

### **SUITS IN PARTICULAR CASES**

#### **SUITS BY OR AGAINST [THE GOVERNEMNT] OR PUBLIC OFFICERS**

##### **IN THEIR OFFICIAL CAPACITY**

79. \* \* \* In a suit by or against the 2 Government) the authority to be named as plaintiff or defendants as the case may be, shall be-

(a) in the case of a suit by or against the Central Government, Pakistan];

(b) in the case of a suit by or against a Provincial Government, the Province; and

80.-(1) A suit may be instituted against the Government or against a public officer, in respect of any act purporting to be done by such public officer in his official capacity, after the expiration of two months next after notice in writing has been delivered to or left at the office of-

(a) in the case of a suit against the Central Government, a Secretary to that Government;

(b) (I) In the case of a suit against the Provincial Government other than a suit relating to the affairs of a Railway, a Secretary to that Government or the Collector of the District; and

(ii) In the case of a suit against the 8[Federal Government] relating to the affairs of a Railway, the General Manager of the Railway concerned, and in the case of a public officer, delivered to him or left at his office stating the cause of action, the name, description of place of residence of the plaintiff and the relief which he claims ; and the plaint shall contain a statement that such notice has been so delivered or left.

(2) Where any such suit is instituted without delivering or leaving such notice as aforesaid or before the expiration of the said period of two months or where the plaint does not contain a statement that such notice has been so delivered or left, the plaintiff shall not be entitled to any costs if settlement as regards the subject-matter of the suit is reached or the Government or the public officer concedes the plaintiff's claim, within the period of two months from the date of the institution of the suit:

Provided that in a suit instituted without such notice, the Court shall allow not less than three months to the Government to submit its written statement.]

81. In a suit instituted against a public officer in respect of any act purporting to be done by him in his official capacity-

(a) the defendant shall not be liable to arrest nor his property to attachment, otherwise than in execution

of a decree, and

(b) where the Court is satisfied that the defendant cannot absent himself from his duty without detriment to the public service, it shall exempt him from appearing in person.

82.-(1) Where the decree is against [the 2[Government]] or Execution against a public officer in respect of any such act as aforesaid, a of decree time

shall be specified in the decree within which it shall be satisfied ; and if the decree is not satisfied within the time so specified, the Court shall report the case for the orders of the 3(Provincial Government)].

(2) Execution shall not be issued on any such decree unless it remains unsatisfied for the period of three months computed from the date of such report.

## **SUITS BY ALIENS AND BY OR AGAINST FOREIGN RULES,**

### **AMBASSADORS AND ENVOYS**

83.-(1) Alien enemies residing [in Pakistan] with the permission of the [Central Government], an alien friends, may sue in the Courts [in the Provinces], as if they were [Citizens of Pakistan].

(2) No alien enemy residing [in Pakistan] without such permission, or residing in a foreign country, shall sue in any of such Courts.

Explanation.-Every person residing in a foreign country the Government of which is at war with 2[or engaged in military operations against] 3[Pakistan], and carrying on business in that country without a [license in that behalf under the hand 4\* \* \* of a Secretary to the 5[Central Government] shall, for the purpose of subsection (2), be deemed to be an alien enemy residing in a foreign country.

84.-(1) A foreign State may sue in any Court [in the Province]:

Provided that such State has been recognized by the [Central Government]:

Provided, also, that the object of the suit is to enforce a private right vested in the head of such State or in any officer of such State in his public capacity.

(2) Every Court shall take judicial notice of the fact that a foreign State has or has not been recognized by the Central Government].

85.(1) Persons specially appointed by order of the Central Government at the request of the Ruler of any foreign State, or at the request of any person competent, in the opinion of the Central Government to act on behalf of such Ruler, to prosecute or defend any suit on his behalf, shall be deemed to be the recognized agents by whom appearances and applications under this Code may be made or done on behalf of such Ruler.]

(2) An appointment under this section may be made for the purpose of a specified suit or of several specified suits, or for the

purpose of all such suits as it may from time to time be necessary to prosecute or defend on behalf of the [Ruler].

(3) A person appointed under this section may authorize or appoint persons to make appearances and applications and do acts in any such suit or suits as if he were himself a party thereto.

86. (1) Any [Ruler of a foreign State] may, [..... With the consent of the Central Government, certified by the signature of a Secretary to that Government] but not without such consent, be sued in any competent Court.

(2) Such consent may be given with respect to a specified suit or to several specified suits or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the Court in which the [Ruler] may be sued; but it shall not be given unless it appears to [the consenting authority] that the [Ruler];

(a) has instituted a suit in the Court against the person desiring to sue him, or

(b) by himself or another trades within the local limits of the jurisdiction of the Court, or

(c) is in possession of immovable property situated within those limits and is to be sued with reference to such property or for money charged thereon.

(3) No such [Ruler] shall be arrested under this Code, and, except with [the consent of the Central Government] certified as aforesaid, no decree shall be executed against the property of any such [Ruler.]

(4) The Central Government may by notification in the [official Gazette] authorize a Provincial Government and any Secretary to that Government to exercise with respect to any [Ruler] named in the notification the functions assigned by the foregoing subsections to the consenting authority and a certifying officer respectively.

(5) A person may as a tenant of immovable property, sue, without such consent as is mentioned in this section, a [Ruler] from whom he holds or claims to hold the property.

186-A. (1) No proceeding in any Court shall lie against a diplomatic agent except in a case relating to-

(a) any private immovable property situated in Pakistan held by him in his private capacity and not on behalf of the sending State for the purpose of the mission;

(b) a succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c) any professional or commercial activity exercised by the diplomatic agent in Pakistan outside his official functions.

(2) No measures of execution shall be taken in respect of a diplomatic agent except in cases which come under clauses (a), (b) and (c) of subsection (1) and in which such measures can be taken without infringing the inviolability of his person or of his residence.

(3) The initiation of any proceedings in a Court by a diplomatic agent shall, preclude him from invoking immunity from jurisdiction under this section in respect of any counter-claim directly connected with the principal claim.

(4) The immunity of a diplomatic agent under subsection (1) or subsection (2) may be waived by the sending State; and any such waiver shall be express.

(5) Waiver of immunity in respect of any proceedings shall not be held to imply waiver of immunity in respect of any measure of execution for which a separate waiver still be necessary.

(6) in this section, 'diplomatic agent' in relation to a State means the head of the mission in Pakistan of that State and includes a member of the staff of that mission having diplomatic rank.

87. [the Ruler of a foreign State] may sue, and shall be sued in the name of his State:

Provided that in giving the consent referred to in the foregoing section [the Central Government, 3\*\*\* or the Provincial Government, as the case be, may direct the any such [Ruler] shall be sued in the name of an agent or in any other name.

87-A. Suits against Rulers of acceding and merged states.]

#### INTERPLEADER

88. Where two or more persons claim adversely to one another the same debt, sum of money or other property movable or immovable, from another person, who claims no interest therein other than or charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made and of obtaining indemnity for himself:

Provided that where any suit is pending in which the rights of all parties can properly be decided, no such suit of interpleader shall be instituted,

## **PART V**

### **SPECIAL PROCEEDINGS**

#### **ARBITRATION**

89. [Arbitration] Omitted by the Arbitration Act, 1940 (X of 1940), S. 49 and Third Schedule.

#### **SPECIAL CASE**

90. Where any persons agree in writing to state a case for the opinion of the Court, then the Court shall try and determine the same in the manner prescribed.

#### **SUITS RELATING TO PUBLIC MATTERS**

91.(1) In the case of a public nuisance the Advocate-General, or two or more persons having obtained the consent in writing of the Advocate-General, may institute a suit, though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case.

(2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.

92.-(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate-General, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the [Provincial Government] within the local limits of whose jurisdiction the whole or any part of the subject matter of the trust is situated, to obtain a decree-

- (a) removing any trustee,
- (b) appointing a new trustee ;
- (c) vesting any property in a trustee ;
- (d) directing accounts and inquiries ;

(e) declaring what proportion of the trust-property or of

the interest therein shall be allocated to any particular

object of the trust ;

(f) authorizing the whole or any part of the trust-property to be let sold, mortgaged or exchanged ;

(g) settling a scheme ; or

(h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863. no suit claiming any of the reliefs specified in subsection (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that subsections,

93. The powers conferred by sections 91 and 92 on the Advocate-General may, <sup>1\*\*\*</sup>, be with the previous sanction of the 2[Provincial Government], exercised also by the Collector or by such officer as the 2[Provincial Government] may appoint in this behalf.

## **PART VI**

### **SUPPLEMENTAL PROCEEDINGS**

94. In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed,-

(a) issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison;

(b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment of any property;

(c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold;

(c) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;

95.-(1) Where, in any suit in which an arrest or attachment has been effected or a temporary injunction granted under the last preceding section.

(a) it appears to the Court that such arrest, attachment or injunction was applied for on insufficient grounds, or;

(b) the suit of the Plaintiff fails and it appears to the Court that there was no reasonable or probably ground

for instituting the same;

the defendant may apply to the Court, and the Court may, upon such application, award against the plaintiff by its order such amount, not exceeding [ten thousand] rupees, as it deems a reasonable compensation to the defendant for the expense of injury caused to him:

Provided that a Court shall not award, under this section, an amount exceeding the limits of its pecuniary jurisdiction.

(2) An order determining any such application shall bar any suit for compensation in respect of such arrest, attachment or Injunction.

## **PART VII**

### **APPEALS FROM ORIGINAL DECREES**

96.-(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed ex-parte.

(3) No appeal shall lie from a decree passed by the Court With the consent of panics.

97. Where any party aggrieved by a preliminary decree passed after the commencement of this Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree.

98.(1) Where an more Judges, the appeal opinion of such Judges.

(2) Where there is no such judgment varying or reversing the decree shall be confirmed:

Provided that where the Bench hearing the appeal is composed of two Judges belonging to a Court consisting of more than two Judges, and the Judges composing the Bench differ in opinion on a point of law, they may state the point of law upon which they differ and the appeal shall then be heard upon that point only by one or more of the other Judges, and such point shall be decided according to the opinion of the majority (if any) of the Judges who have heard the appeal, including those who first heard it.

1[(3) Nothing in this section shall be deemed to alter or otherwise affect any provision of the letters patent any High Court.].

99. No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder of parties or causes of – action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court

### **APPEALS FROM APPEALATE DECABRIS**

100.-(1) Save where otherwise expressly provided - in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to a High Court on any of the following grounds, namely:

(a) the decision being contrary to law or to some usage having the force of law.

(b) the decision having failed to determine some material issue of law or usage having the force of law

(c) a substantial error or defect in the procedure provided by this Code or by any other law for the time

being in force, which may possibly have produced error or defect in the decision of the case upon the

merits.

2[(2) \* \* \* \*

101. No second appeal shall lie except on the grounds mentioned in section 100.

3[102. No second appeal shall lie,-

(a) in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed [twenty-five thousand] rupees; and

(b) in any other suit, when the amount or value subject matter of the original suit does not exceed 4[two hundred fifty thousand] rupees.

103. In any second appeal the High Court may, if the evidence on the record is sufficient determine any issue of fact necessary for the disposal of the appeal 5[which has not been determined by the lower appellate Court or which has been wrongly determined by such Court by reason -of any illegality, omission, error or defect such as is referred to in subsection (1) of section 100].

### **APPEALS PROM ORDERS**

104.-(1) An appeal. shall lie from the following orders, and save as otherwise express1y provided In the body of this Code or by any law for the time being in force, from no other orders: -

2[f] an order under section 35-A;

(ff) an order under section 47;]

(g) an order under section 95;

(h) an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree;

(i) any order made under rules from which an appeal is express1y allowed by rules:

3[Provided that no appeal shall lie against any order specified in clause (f) 4save on the ground that no order, or an order for the payment of a Jess amount, ought to have been made].

(2) No appeal shall lie from any order passed in appeal under this section.

105.-(1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but where a decree is appeared from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

(2) Notwithstanding anything contained in subsection

(1), where any party aggrieved by an order of remand made after the commencement of this Code from which an appea1lies does not appeal there from, he shall thereafter be precluded from disputing its correctness.

106. Where an appeal from any order is allowed it shall lie to the Court to which an appeal would lie from the decree in the suit in which such order was made, or where such order is made by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High Court.

### **GENERAL PROVISIONS RELATING TO APPEALS**

107.-(1 ) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power:-

- (a) to determine a case finally;
- (b) to remand a case;
- (c) to frame issues and refer them for trial;
- (d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in' respect of suits instituted therein.

108. The provisions of this Part relating to appeal from original decrees shall, so far as may be, apply to appeal-

- (a) from appellate decrees, and
- (b) from orders made under this Code or under any special or local law in which a different procedure is not provided.

### **APPEALS TO THE [SUPREME COURT]**

3[109. An appeal from a judgment decree or final order of a High Court shall lie to the Supreme Court -

- (a) if the amount or value or the subject-matter or the dispute in the court of first instance was and also in appeal is (unless varied by an Act or Parliament) fifty thousand rupees or upward and the judgment decree or final order appealed from has varied or set aside the judgment decree or final order of the Court immediately below; or
- (b) if the judgment, decree or final order involves directly or indirectly, some claim or question respecting property or the like amount or value and the judgment, decree or final order appealed from has varied or set aside the judgment decree or final order of the Court immediately below; or

(c) if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution.]

110. [Omitted by Federal Adaptation of Laws Order (P.O.4 of 1975) w.e.f 1st August 1975]

111. Notwithstanding anything contained in section 109, no appeal shall lie to 4[the Supreme Court]

(a) from the decree or order of one Judge of a High Court 5\*\*\*, or of one Judge of a Division Court, or of two or more Judges of such High .Court, or of a Division Court, constituted by two or more Judges of such High Court, where such Judges are cqua11y divided in opinion and do not amount in number to a majority of the whole of the Judges of the High Court at the time being; or

(b) from any decree from which under section 102 no second appeal lies.

111.A.-[Omitted by the Federal Court Act, 1941 (XXI of 1941), S. 2.]

112.-2[(1) Nothing contained in this Code shall be deemed-

(a) to affect the powers of the Supreme Court under Article 3[191 of the Constitution or any other provision thereof] ; or

(b) to interfere with any rules made by the Supreme Court, and for the time being in force, for the presentation of appeals to that Court, or their conduct before that Court.]

(2) Nothing herein contained applies to any matter of criminal or admiralty or vice-admiralty jurisdiction, or to appeals from orders and decrees of Prize Courts.

## PART VII

### **REFERENCE REVIEW AND REVISION**

113. Reference to High Court. – Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit.

114. [Review.-(1) Subject as aforesaid, any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order. And the Court may make such order thereon as it thinks fit.

(2) Nothing contained in sub-section (1) shall apply to a review of any judgment pronounced or order made by the Supreme Court.]

115.-1[(1 )} The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material

irregularity, the High Court may make such order in the case as it thinks fit;

2[Provided that where a person makes an application under this subsection, he shall in support of such application, furnish copies of the pleadings, documents and order of the subordinate Court and the High Court shall, except for reasons to be recorded, dispose of such application without calling for the record of the subordinate Court.]

3[Provided further that such application shall be made within ninety days of the decision of the subordinate Court] 4[which shall provide a copy of such decision within three days thereof and the High Court shall dispose of such application within six months],

5[(2) The District Court may exercise the powers conferred on the High Court by subsection (1) in respect of any case decided by a Court subordinate to such District Court in which no appeal lies and the amount or value of the subject-matter whereof does not exceed the limits of the appellate jurisdiction of the District Court.

(3) If any application under subsection (1) in respect of a case within the competence of the District Court has been made either to the High Court or the District Court, no further such application shall

be made to either of them. (4) No proceedings in revision shall be entertained by the High Court against an order made under subsection (2) by the District Court.]

## **PART IX**

### **SPECIAL PROVISIONS RELATING TO 6\* \* \***

#### **HIGH COURT**

116. This part applies only to High Courts 7\*\*\*\*\*

117. Save as provided in this Part or in Part X or in rules, the provisions of this Code shall apply to 1\*\*\* High Courts.

118. Where any 1\*\*\* High Court considers it necessary that a decree passed in the exercise of its original civil jurisdiction should be executed before the amount of the costs incurred in the suit can be ascertained by taxation, the Court may order that the decree shall be executed forthwith except as to so much thereof as relates to the costs;

and as to so much thereof as relates to the costs, that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.

119. Nothing in this Code shall be deemed to authorize any person on behalf of another to address the Court in the exercise of its original civil jurisdiction, or to examine witnesses, except where the Court shall have in the exercise of the power conferred by its charter authorized him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakils and attorneys.

120.(1) The following provisions shall not apply to the High Court in the exercise of its original civil jurisdiction, namely, sections 16, 17 and 20.

## **PART X**

### **RULES**

121. The rules in the First Schedule shall have effect as if enacted in ,the body or this Code until annulled pt altered in accordance with the provisions or this Part.

122. 3[The High Courts] 4\*\*\* may, from time to time after previous publication, make rules regulating their own procedure and the procedure of the civil Courts subject to their superintendence, and may by such rules annul, alter or ad to all of any of the rules in the First Schedule.

123 -(I) A Committee, to be called the Rule Committee, shall be constituted at J[the town which is the usual place of sitting of each of the High Courts 2. . . 30 . . referred to in section 122].

(2) Each such Committee shall consist of the following persons namely:-

(a) three Judges of the High Court established at the town at which such Committee is constituted, one of whom at least has served as a District Judge or 4\*\*\*\* a Divisional Judge for three years.

(b) 5 \* \* \* \* \*

(c) 6[two advocates practising in that Court and].

(d) a Judge of a Civil Court subordinate to the High Court, 7\* \* \* \*

(3) The members of each such Committee shall be appointed by the Chief Justice 8\* \*\* who shall also nominate one of their member to be president:

Provided that, if the Chief Justice 8\*\*\* elects to be himself a member of a Committee, the number of other Judges appointed to be members shall be two and the Chief Justice 8\*\*\* shall be the President of the Committee.

(4) Each member of any such Committee shall hold office for such period as may be prescribed by the Chief Justice 8\* \* \* in this behalf; and whenever any member retires, resigns, dies or ceases to reside in the Province in which the Committee was constituted, or becomes incapable of acting as a member of the Committee, the said Chief Justice 8\* \* \* may appoint another person to be a member in his stead.

(5) There shall be a Secretary to each such Committee who shall be appointed by the Chief Justice 8\*\*\* and shall receive such remuneration as may be provided in this behalf [by the Provincial Government].

124. Every Rule Committee shall make a report to the High Court established at the town at which it is constituted on any proposal to annul alter or add to the rules in the First Schedule or to make new rules, and before making any rules under section 122 the High Court shall take such report into consideration.

125. \* \* \* \* \* . . . . .

126. Rules made under the foregoing provisions shall be subject to the previous approval of the Government of the Province in which the Court whose procedure

the rules regulate is situate or, if that Court is not situate in any Province, to the previous approval of the 4[Federal Government].

127. Rules so made and 5[approved] shall be published in the 6[official Gazette \*\*\*], and shall from the date of publication or from such other date as may be specified have the same force and effect within the local limits of the jurisdiction of the High Court which made them, as if they had been contained in the Pint Schedule.

128.-(1) Such rules shall not be inconsistent with the provisions in the body of this Code, but, subject thereto, may provide for any maters relating to the procedure of civil Courts.

(2) In particular and without prejudice to the generality or the powers conferred by subsection (1), such rules may provide for all or any of the following matters, namely:

(a) the service of summonses, notices and other processes by post or in any other manner either generally or in any specified areas, and the proof of such service;

(b) the maintenance and custody, while under attachment or livestock and other movable property the fees pay able for such maintenance and custody, the sale of such

livestock and property and the proceeds of such sale.

(c) procedure in suits by way of counter claim, and the valuation of such suits for the purposes of jurisdiction;

(d) procedure in garnishee and charging orders either fu addition to, or in substitution for, the attachment and sale of debts ;

(e) procedure where the defendant claims to be entitled to contribution or indemnity over against any person whether a party to the suit or not;

(f) summary procedure-

(i) in suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising on a contract express or implied;

on an enactment where the sum sought to be recovered is a fixed sum of money or in the nature of debt other than a penalty; or

on a guarantee, where the claim against the principle is in respect of a debt or a liquidated demand only; or on a trust; or

(ii) in suits for the recovery of immovable property, with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been only determined by notice to quit, or has become liable to forfeiture for non-payment of rent, or against persons claiming under such tenant;

(g) procedure by way of originating summons;

(h) consolidation of suits, appeals and other proceedings;

(i) delegation to any Registrar, Prothonary or master or other official of the Court of any judicial, quasi-judicial and non-judicial duties; and

(j) all forms, registers, books, entries and accounts which may be necessary or desirable for the transaction of the business of civil Courts.

129. Notwithstanding anything in this Code, any High Court <sup>1</sup>\*\*\* may make such rules not inconsistent with <sup>2</sup>[its Letters Patent] to regulate its own procedure in the exercise of its original civil jurisdiction as it shall think fit, and nothing herein contained shall affect the validity of any such rules in force at the commencement of this Code.

130. \* \* \* \* \*

131. Rule made in accordance with section 129 <sup>1</sup>\* \* \* shall be published in the <sup>2</sup>[official Gazette \* \* \*] and shall from the date of publication or from such other date as may be specified have the force of law.

## **PART XI**

### **MISCELLANEOUS**

132.-(1) Women who according to the customs and manners of the country, ought not to be compelled to appear in public shall be exempt from personal appearance in Court.

(2) Nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process in any case in which the arrest of women is not prohibited by this Code.

133.-(1) The <sup>2</sup>[provincial Government] may, by notification in the [official Gazette], exempt from personal appearance in Court any person whole rank, in the opinion of such Government, entitles him to the privilege of exemption.

(2) The names and residences of the persons so exempted shall, from time to time, be forwarded to the High Court by the [Provincial Government] and a list of such persons shall be kept in such Court, and a list of such persons as reside within the local limits of the jurisdiction of each Court subordinate to the High Court shall be kept in such subordinate Court.

(3) Where any person so exempted claims the privilege of such exemption and it is consequently necessary to examine him by party requiring his evidence pays the costs of that commission, unless the party requiring his evidence pays such costs.

134. The provisions of sections 55, 57 and 59 shall apply, so far as may be, to all persons arrested under this Code.

135. (1) No Judge, Magistrate or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from, his Court.

(2) Where any matter pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtars, revenue-agents and recognized agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under civil process other than process issued by such tribunal for contempt of Court while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal.

(3) Nothing in subsection (2) shall enable a judgment-debtor to claim exemption from arrest under an order for immediate execution or where such judgment-debtor attends to show cause why he should not be committed to prison in execution of a decree.

135-A.-(I) No person shall be liable to arrest or detention in prison under civil process: -

[(a) If he is member of Legislature 4 \*\*\* 5 \*\*\* during the continuance of any meeting of such Legislature 6\*\*]

[b] If he is member of any committee of such [Legislature 6\* \*], during the continuance of any meeting of such committee;

5\* \* \* \* \*

and during the fourteen days before and after such meeting of sitting.

(2) A person released from detention under subsection (1) shall, subject to the provisions of the said subsection, be liable to

re-arrest and to the further detention to which he would have been liable if he had not been released under the provisions of sub-section (1)]

136.-(1) Where an application is made that a person shall be arrested or that property shall be attached under any provision of this Code not relating to the execution or decree, and such person resides or such property is situated outside the local limits of the jurisdiction of the Court to which the application is made the Court may in its direction, issue a warrant or arrest or make an order of attachment and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situated a copy of the warrant or orders, together with the probable amount of the costs of the arrest or attachment.

(2) The District Court shall on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by Court subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment

(3) The Court making an arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he shows cause to the satisfaction of the former Court why he should not be sent to the latter Court, or unless he furnishes sufficient security for his appearance before the latter Court or for satisfying any decree that may be passed against him by that Court, in either of which cases the Court making the arrest shall release him.

137. (1) The language which, on the commencement of this Code, is the language of any Court subordinate to a High Court shall continue to be the language of such subordinate Court until the [Provincial Government] otherwise directs.

(2) The [Provincial Government] may declare what shall be the language of any such Court and in what character applications to and proceedings in such Courts shall be written.

(3) Where this Code requires or allows anything other than the recording of evidence to be done in writing in any such Court, such writing may be in English; but if any party or his pleader is unacquainted with English a translation into the language of the Court shall, at his request, be supplied to him; and the Court shall make such order as it thinks fit in respect of the payment or the costs of such translation.

138. The [High Court] may, by notification in the [official Gazette] direct with respect to any judge specified in the notification or failing under a description set forth therein, that evidence in cases in which an appeal is allowed shall be taken down by him in the English language and in manner prescribed.

(2) Where a Judge is prevented by any sufficient reason from complying with a direction under subsection (1), he shall record the reason and cause the evidence to be taken down in writing from his dictation in open Court.

139. In the case of any affidavit under this Code-

(a) any Court or Magistrate, or

(b) any officer or other person whom a High Court may appoint in this behalf, or ;

(c) any officer appointed by any other Court which the [Provincial Government] has generally or specially empowered in this behalf, may administer the oath to the deponent:

140.-(1) In any Admiralty or Vice-Admiralty cause of salvage, towage or collision, the Court, whether it be exercising its original or its appellate jurisdiction, may if it thinks fit and shall upon request of either party to such cause, summon to its assistance, in such manner as it may direct or as may be prescribed two competent assessors; and such assessor shall attend and assist accordingly:

(2) Every such assessor shall receive such fees to for his attendance, to be paid by such of the parties as the Court may direct or as may be prescribed.

141. The procedure provided in this Code in regard to suits shall be followed as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

142. All orders and notices served on or given to any person under the provision or this Code shall be in writing.

143. Postage, where chargeable on a notice, summons or letter issued under this Code and forwarded by post and the fee for registering the same, shall be paid within a time to be fixed before the communication is made:

Provided that the [Provincial Government] 2\* \* \* may remit such postage~ or fee or both or may prescribe a scale of court-fees to be levied in lieu thereof.

144.-(1) Where and in so far as a decree is varied or reversed the Court of first instance shall on the application of any party entitled to any benefit by way of restitution or otherwise cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree of such part thereof as has been

varied or reversed; and, for this purpose, the Court may make any orders, including orders for the refund of cost and for the payment of interested damages, compensation and mesne profits, which are properly consequential on such variation or reversal.

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under subsection(1)

145. Where any person has become liable as surety:

(a) For the performance of any decree or any part thereof; or

(b) For the restitution of any property taken in execution of a decree, or

(c) For the payment of any money, or for the fulfillment of any condition imposed on any person, under an order of the Court in any suit or in any proceedings consequent thereon, the decree or order may be executed against him to the extent to which he has rendered himself personally liable, in the manner herein provided for the execution of decrees, and such person shall for the purposes of appeal be deemed a party within the meaning of section 47;

Provided that such notice: as the Court in each case thinks sufficient has been given to the surety.

146. Save as otherwise provided by the Code or by any law for the time being in force where any proceeding may be taken or application made by or against any person, then the proceedings may be taken or the application may be made by or against any person claiming under him.

147. In all suits to which any person under disability is a party, any consent or agreement as to any proceeding shall, if given or made with the express leave of the Court by the next friend or guardian for the suit, have the same force and effect as if such person, were under no disability and had given such consent or made such agreement.

148. Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.

149. Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court fees has not been paid the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the

case may be, of such court-fee is payable, to pay the whole or part, as the case may be, of such court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.

150. Save as otherwise provided, where the business of any Court is transferred to any other Court, the Court to which the business is so transferred shall have the same powers and shall perform the same duties as those respectively conferred and imposed by or under this Code upon the Court from which the business was so transferred.

151. Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

152. Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.

153. The Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.

154. [Omitted by Ordinance (27 of 1981), Second Sched., item 46(11)].

155. [Omitted by *ibid*].

156. Rep. by the Second Repealing and Amending Act 1914 (XVII of 1914), s.3 and Second Schedule.

157. Notifications published, declarations and rules made, places appointed, agreements filed, scales prescribed, forms framed, appointments made and powers conferred under Act VIII of 1859 or under any Code of Civil Procedure or any Act amending the same or under any other enactment hereby repealed shall, so far as they are consistent with this Code, have the same force and effect as if they had been respectively published, made, appointed, filed, prescribed, framed and conferred under this Code and by the authority empowered thereby in such behalf.

158. In every enactment or notification passed or issued before the commencement of this Code in which reference is made to or to any Chapter or section of Act VIII of 1859 or any Code of Civil Procedure or any Act amending the same or any other enactment hereby repealed, such reference

shall, so far as may be practicable, be taken to be made to this Code or to its corresponding Part, Order, section or rule.

## **ORDER I**

### **PARTIES SUITS**

1. All persons may be joined in one suit as Plaintiffs in whom any right to [relief in respect of or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such persons brought separate suits, any common question of law or fact would arise.
2. Where it appears to the Court that any joinder of plaintiffs may embarrass or delay the trial of the suit, the Court may put the plaintiffs to their election or order separate trials or make such other order as may be expedient.
3. All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, Whether jointly, severally or in the alternatively, where, if separate suits were brought against such persons, any common quest on of law or fact would arise.
4. Judgment may be given without any amendment-
5. It shall not be necessary that every defendant shall be interested as to all the relief claimed in any suit against him.
6. The plaintiff may, at his option, join as same suit nil or any of the persons severally, severally, liable on any one contract, including exchange, hundis and promissory notes.
7. Where the plaintiff is in doubt as to the person from whom be is entitled to obtain redress, he may join two or more defendants in order that the question as to winch of the defendants is liable, and to what extent, may be determined as between all parties.
8. (I) Where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the Court, sue or be sued, or may defend, in such suit, on behalf of or for the benefit of all persons so interested. But the Court shall in such case give, at the plaintiff's expense, notice of the institution of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

9. No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in the matter in controversy so far as regards the rights and interests of the parties actually before it.

10. (1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is

doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court unless the as may be the plaintiff thinks fit, effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where a defendant is added, the plaint shall, Court otherwise directs, be amended. in such manner necessary, and amended copies of the summons and of shall be served on the new defendant and, if the Court on the original defendant.

(5) Subject to the provisions of the [IX of 1908], section 22, the proceedings added as defendant shall be deemed to service of the summons.

11. The Court may give the conduct of the suit to such person as it deems.

12. (1) here there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other, in any proceedings; and in like manner, where there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding.

(2) The authority shall be in writing signed by the party giving it and shall be filed in Court.

13. All objections on the ground of non-joinder or misjoinder of parties shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently, arisen, and any such objection not so taken shall be deemed to have been waived.

## **ORDER II**

### **FRAME OF SUIT**

1. Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them.

2. (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished claim.

(3) A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such relief; but if he omits, except with the leave of the Court, to sue for all such relief, he shall not afterwards sue for any relief so omitted.

Explanation: For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

Illustration:

A lets a house to B at a yearly rent of Rs.1,200. The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid. A sues B in 1908 only for the rent due for 1906. A shall not afterwards sue B for the rent due for 1905 or 1907.

3.- (1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject matters at the date of instituting the suit.

4.- No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immovable property, except-

(a) Claims for mesne profits or arrears of rent in respect of the property claimed or any part thereof;

(b) Claims for damages for breach of any contract under which the property or any part thereof is held; and

(c) Claims in which the relief sought is based on the same cause of action;

Provided that nothing in this rule shall be deemed to prevent any party in a suit for foreclosure or redemption from asking to be put into possession of the mortgaged property.

5. No claim by or against an executor, administrator or heir, as such, shall be joined with claims by or against him personally, unless the last mentioned claims are alleged to arise with reference to the estate in respect of which the Plaintiff or defendant sues or is sued as executor, administrator or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represent.

6. Where it appears to the Court that any causes of action joined in one suit cannot be conveniently tried or disposed of together, the Court may order separate trials or make such other order as may be expedient.

7. All objections on the ground of misjoinder of causes of action shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have waived.

### **ORDER III**

#### **RECOGNIZED AGENTS AND PLEADERS**

1. Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader [appearing, applying or acting, as the case may be,] on his behalf:

Provided that any such appearance shall, if the Court so directs, be made by the party in person.

2. The recognized agent of parties by whom such appearances, applications and acts may be made or done are-

(a) persons holding powers-of-attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties ;

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only where no other agent is expressly authorized to make and do such appearances, applications and acts.

3.-(1) Processes served on the -recognized agent of a party shall be as effectual as if the same had been served on the in person, unless the Court otherwise directs.

(2) The provisions for the service of process on a party to a suit shall apply to the service of process on his recognized agent.

2[4-(1) No pleader shall act for any person in unless he has been appointed for the purpose by such a document in writing signed by such person or by his agent or by some other person duly authorized by power of attorney to make such appointment.

(2) Every such appointment shall be filed in Court and shall be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.

(3) For the purposes of sub-rule (2) an application for review of judgment, an application, under section 144 or section 152 of this Code, any appeal from any decree or order in the suit and any application or act for the purpose of obtaining copies of documents or return of documents produced or filed in the suit or of obtaining refund of monies paid into the Court in connection with the suit shall be deemed to be proceedings in the suit.

(4) The High Court may, by general order, direct that, where the person by whom a pleader is appointed is unable to write his name, his mark upon the document appointing the pleader shall be attested by such person and in such manner as may be specified by the order.

(5) No pleader who has been engaged for the purpose of pleading only shall plead on behalf of any party, unless he has filed in Court a memorandum of appearance signed by himself and stating-

(a) the names of the parties to the suit,

(b) the name of the party for whom he appears, and

(c) the name of the person by whom he is authorized to appear.

Provided that nothing in this sub-rule shall apply to any pleader engaged to plead on behalf of any party by any other pleader who has been duly appointed to act in Court on behalf of such party.

5. Any process served on the pleader of any party or left at the office or ordinary residence of such pleader, and whether the same is for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents, and, unless the Court otherwise directs, shall be as effectual for all purposes as if the same had been given to or served on the party in person.

6.-(1) Besides the recognized agents described in rule 2 any person residing within the jurisdiction of the Court may be appointed an agent to accept service of process.

(2) Such appointment maybe special or general and shall be made by an instrument in writing signed by the principal, and such instrument or, if the appointment is general, a certified copy thereof shall be filed in Court.

#### **ORDER IV**

#### **INSTITUTION OP SUITS**

1.-(1) Every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf.

(2) Every plaint shall comply with the rules contained Orders VI and VII, so far as they are applicable.

2. The Court shall cause the particulars of every suit to be entered in a book to be kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the plaints are admitted.

#### **ORDER V**

## **ISSUE AND SERVICE OF SUMMONS**

1.----(1) When a suit has been duly instituted a summons may be issued to the defendant to appear and answer the claim on a day to be therein specified Provided that no defendant has appeared

admitted the plaintiff's claim.

(2) A defendant to whom a summons has been issued under sub-rule (1) may appear-

(a) in person, or

(b) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(c) by a pleader accompanied by some person able to answer all such questions.

(3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court.

2. Every summons shall be accompanied by a copy of the plaint or, if so permitted, by a concise statement.

3.-1 Where the Court sees reason to require the appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified.

(2) Where the Court sees reason to require the personal appearance of the Plaintiff on the same day, it shall make an order for such appearance.

4. No party shall be ordered to appear in person unless he resides-

(a) within the local limits of the Court's ordinary original jurisdiction, or

(b) without such limits but at a place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixth of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the Court-house.

5. The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit ; and the summons shall contain a direction accordingly

Provided that, in every suit heard by a Court of Small Causes, the summons shall be for the final disposal of the suit.

6. The day for the appearance of the defendant shall be fixed with reference to the current business of the Court, the place of residence of the defendant and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

7. The summons to appear and answer shall order the defendant to produce all documents in his possession or power upon which he intends to rely in support of his case.

8. Where the summons is for the final disposal of t shall also direct the defendant to produce, on the day his appearance, all witnesses upon whose evidence he I rely in support of his case.

9.- (1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent to the proper officer to be served by him or one of his subordinates.

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him by post or in such other manner as the Court may direct.

1[(3) Unless the Court otherwise directs, the proper officer or an officer authorized by him in this behalf shall cause the service of summons and return it to the Court within fifteen days of issue of summons.]

10. Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer, as he appoints in this behalf, and sealed with the seal of the Court.

2[10-A.-(1) simultaneously, with the issue of summons under rule 9, there shall be sent, unless to the defendant, by registered other copy of the summons provided in rule 10.

(2) An acknowledgement purporting to be signed by the defendant of the receipt of the registered communication or an endorsement by a postal employee that the defendant refused to take delivery of the same shall be deemed by the Court issuing the summons to be prima facie proof of service of summons.

11. Save as otherwise prescribed, defendants than one, service of the summons each defendant.

12. Wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

13.-(l) In a suit relating to any business or work against a person who does not reside within; the local limits of the jurisdiction of the Court from which the summons is issued, service on any manager or agent, who, at the time of service, personally carries on such business or works for such person within such limits, shall be deemed good service.

(2) For the purpose of this rule the master of a ship shall be deemed to be the agent of the owner or character.

14. Where in a suit to obtain relief respecting, or compensation for wrong to, immovable property, service cannot be made on the defendant in person, and the defendant has no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

15. Where in any suit the defendant cannot be found and has no agent empowered to accept service of the summons on his behalf, service may be made on any adult male member of the family of the defendant who is residing with him.

Explanation: A servant is not a member of the family within the meaning of this rule.

16. Where the serving officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons.

17. Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any), by whom the house was identified and in whose presence the copy was affixed.

18. The serving officer shall, in all cases in which the summons has been served under rule 16, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when and the manner in which the summons was served, and the name and address

of the person (if any) identifying the person served and witnessing the delivery or tender of the summons.

19. Where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further inquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

20.-(1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order for service of the summons by-

(a) affixing a copy of the summons at some conspicuous part of the house, if any, in which the defendant is known to have last resided or carried on business or personally worked for gain; or

(b) any electronic device of communication which may include telegram, phonogram, telex, fax, radio and television; or

(c) urgent mail service or public courier services; or

(d) beat of drum in the locality where the defendant resides; or

(e) publication in press; or

(f) any other manner or mode as it may think fit:

Provided that the Court may order the use of all or any of the aforesaid manners and modes of service simultaneously].

(2) Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

(3) Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require [which shall not ordinarily exceed fifteen days].

21. A summons may be sent by the Court by which it is issued, whether within or without the Province, either by one of its officers or by post to any Court (not being the High Court) having jurisdiction in the place where the defendant resides.

22. Omitted by the A. O., 1949.

23. The Court to which a summons is sent under rule 2 \* \* shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue, together with the record (if any) of its proceedings with regard thereto in a prison, the otherwise to the defendant.

25. Where the defendant resides out of 3[Pakistan] and has no agent in 3[Pakistan] empowered to accept service, the summons shall 4[except in the cases mentioned in rule 26-A] be addressed to the defendant at the place where he is residing and sent to him by post. If the is postal communication between such place and the place where the Court is situate.

26. Where: –

(a) In the enteric of any foreign 3[or extra-provincial jurisdiction vested in the Central (3ovcrnment), a Political Agent has been appointed, or a Court has been established or continued, with power to serve a summons issued by a Court under this Code in any foreign territory in which the defendant resides, or

(b) 3[the Provincial Government] has, by notification in the of1icial Gazette], declared, in respect of any Court situate In any such territory and not established or con-wined in the exercise of any such jurisdiction as aforesaid that service by such Court of any summons 6[issued under this Code by a Court of the Province] shall be deemed to be valid service,]

the summons may be sent to such Political Agent or Court, by post or otherwise, for the purpose of being served upon the defendant ; and, if the Political Agent or Court returns the summons with an endorsement signed by such Political Agent or by the Judge or other officer of the Court that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be deemed to be evidence of service.

[26-A. where the defendant is a servant (not belonging to the military, naval or air forces) of any Government in India, or civil public a servant of a railway company or local authority in India, the officer or on summons together with a copy of it to be retained by the defendant shall be sent, with a request that it may be served on the defendant.

(a) In the case of a defendant serving in connection with the affairs of the Government of India or a servant of a Railway in India, to the Secretary to the Government of India in the Ministry of Home Affairs, and

(b) in the case of a defendant serving in connection with the affairs of any other Government in India, or in the case of a servant of a local authority in India, to the Home Secretary to that Government or,

as the case may be to the Home Secretary to the Government in whose territories the local authority has its jurisdiction.

27. Where the defendant is a public officer (not belonging to the armed forces of Pakistan) or is the servant of a railway company or local authority, the Court may, if it appears to it that the summons may be most conveniently so served, send it for service on the defendant to the head of the office in which he is employed, together with a copy to be retained by the defendant.

28. Where the defendant is a soldier, [sailor] [or airman] the Court shall send the summons for service to his commanding officer together with a copy to be retained by the defendant.

29. (1) Where a summons is delivered or sent to any person for service under rule 24, rule 27 or rule 28, such person shall be bound to serve it, if possible, and to return it under his signature with the written acknowledgement of the defendant, and such signature shall be deemed to be evidence of service.

(2) Where from any cause service is impossible, the summons shall be returned to the Court with a full statement of such cause and of the steps taken to procure service, and such statement shall be deemed to be evidence of non-service.

30. (1) The Court may, notwithstanding anything herein before contained, substitute for a summons a letter signed by the Judge or such officer as he may appoint in this behalf, where the defendant is, in the opinion of the Court, of a rank entitling him to such mark of consideration.

(2) A letter substituted under sub-rule (1) shall contain all the particulars required to be stated in summons, and, subject to the provisions of sub-rule (3), shall be treated in all respects as a summons.

(3) A letter so substituted may be sent to the defendant by post or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; and where the defendant has an agent empowered to accept service, the letter may be delivered or sent to such agent.

## **ORDER VI**

### **PLEADINGS GENERALLY**

1. "Pleading" shall mean plaint or written statement.

2. Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading

relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively-Dates, sums and numbers shall be expressed in figures.

3. The forms in Appendix A when applicable, and where they are not applicable forms of the like character, as nearly as may be, shall be used for all pleadings.

4. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.

5. A further and better statement of nature of the claim or defence, or further and better particulars of any matter stated in any pleading, may in all cases be ordered, upon such terms as to costs and otherwise, as may be just.

6. Any condition precedent the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.

7. No pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

8. Where a contract is alleged in any pleading, a bare denial of the same by the opposite-party shall be construed only as a denial in fact of the express contract alleged or of the matters of fact from which the same may be implied, and not as a denial of the legality or sufficiency in law of such contract.

9. Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

10. Wherever it is material to allege, malice fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

11. Wherever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such

notice as a fact, unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred, are material.

12. Whenever any contract or any relation between any persons is to be implied from a series of letters or conversations or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

13. Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side unless the same has first been specifically denied (e.g., consideration for a bill of exchange where the plaintiff sues only on the bill and not for the consideration as a substantive ground of claim).

14. Every pleading shall be signed by the party and his pleader (if any): Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.

15. (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified [on oath or solemn affirmation] at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

16. The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the suit.

17. The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

18. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.

## **ORDER VII**

### **PLAINT**

1. The plaint shall contain the following particulars:-

a) the name of the Court in which the suit is brought;

b) the name, description and place of residence of the plaintiff;

c) the name, description and place of residence of the defendant, so far as they can be ascertained;

d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;

e) the facts constituting the cause of action and when it arose;

f) the facts showing that the Court has jurisdiction;

g) the relief which the plaintiff claims;

h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and

i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees so far as the case admits.

2. Where the plaintiff seeks the recovery of money, the plaint shall state the precise amount claimed;

But where the plaintiff sues for mesne profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, the plaint shall state approximately the amount sued for.

3. Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries

or numbers in a record of settlement of survey, the plaintiff shall specify such boundaries or numbers.

4. Where the plaintiff sues in a representative character the plaintiff shall show not only that he has an actual existing interest in the subject-matter, but that he has taken the steps(if any) necessary to enable him to institute a suit concerning it.

5. The plaintiff shall show that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand.

6. Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaintiff shall show the ground upon which exemption from such law is claimed.

7. Every plaintiff shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement.

8. Where the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct grounds they shall be stated as far as may be separately and distinctly.

9. The plaintiff shall endorse on the plaintiff, or annex thereto, a list of the documents (if any) which he has produced along with it.

1(A) [The plaintiff shall present with his plaintiff -

a) As many copies on plain paper of the plaintiff as there are defendants, plus two extra copies, unless the Court, by reason of the length of the plaintiff or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief claimed in the suit, in which case he shall present such statements; and

b) Draft forms of summons and fees for service thereof]

2. Where the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, such statements shall show in what capacity the plaintiff or defendant sues or is sued.

3. The plaintiff may, by leave of the Court, amend such statements so as to make them correspond with the plaint.

4. The chief ministerial officer of the Court shall sign such list and copies or statements if, on examination, he finds them to be correct.

10-(1) The plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

(2) On returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.

11. The plaint shall be rejected in the following cases:-

a) where it does not disclose a cause of action:

b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so:

c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so:

d) where the suit appears from the statement in the plaint to be barred by any law.

12. Where a plaint is rejected the Judge shall record an order to that effect with the reasons for such order.

13. The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

Documents relied on in Plaint

14.-(1) Where a plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint.

(2) Where he relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint.

15. Where any such document is not in the possession or power of the plaintiff, he shall, if possible, state in whose possession or power it is.

16. Where the suit is founded upon a negotiable instrument, and it is proved that the instrument is lost, and an indemnity is given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may pass such decree as it would have passed if the plaintiff had produced the instrument in Court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint.

17. – (1) Save in so far as is otherwise provided by the Bankers' Books Evidence Act, 1891, where the document on which the plaintiff sues is an entry in a shop-book or other account in his possession or power, the plaintiff shall produce the book or account at the time of filing the plaint, together with a copy of the entry on which he relies.

(2) The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification; and after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the plaintiff and cause the copy to be filed.

18 – (1) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced, or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(2) Nothing in this rule applies to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant or handed to a witness merely to refresh his memory.

19 – (1) Every plaint or original petition shall be accompanied by a proceeding giving an address at which service of notice, summons or other process may be made on the plaintiff or petitioner.

(2) Plaintiffs or petitioners subsequently added shall immediately on being so added file a proceeding of this nature.

(3) The address filed under this rule shall be entered in the Register of suits maintained under Order IV, rule 2.

20. An address for service filed under the preceding rule shall be within the local limits of the District Court within which the suit or petition is filed, or of the District Court within which the party ordinarily resides.

21. Where a plaintiff or petitioner fails to file an address for service, he shall be liable to have his suit dismissed or his petition rejected by the Court suo motto or any party may apply for an order to that effect and the Court may make such order as it thinks just.

22. (1) Where a party is not found at the address given by him for service and no agent or adult male member of his family on whom a notice, summons or other process can be served is present, a copy of the notice, summons or other process shall be fixed to the outer door of the house.

(2) If, on the date fixed, such party is not present, another date shall be fixed and a copy of the notice, summons or other process shall be sent to the said address by registered post, and such service shall be deemed to be as effectual as if the notice, summons or other process had been personally served.

23. Where a party engages a pleader, notices summons or other processes for service on him shall be served in the manner prescribed by Order III, rule 5, unless the Court directs service at the address for service given by the party.

24. A party who desires to change the address for service given by him as aforesaid shall file a verified petition, and the Court may direct the amendment of the record accordingly. Notice of such petition shall be given to such other parties to the suit as the Court may deem it necessary to inform, and may be either served upon the pleaders for such parties or be sent to them by registered post, as the Court thinks fit.

25. Nothing in these rules shall prevent the Court from directing the service of a notice, summons or other process in any other manner, if for any reasons, it thinks fit to do so.

26 – (1) In every suit of the nature referred to in rule 3, Order XXII, the plaint shall be accompanied by a statement giving

-

(a) the names and addresses of the persons who, in the event of the death of the plaintiff, may be made a party as his legal representatives;

(b) the name and address of the person who, in the event of the death of the plaintiff, shall intimate such fact to the Court, furnish the Court with the names, particulars and addresses of the legal representatives of the plaintiff and make an application for the legal representatives to be made a party.

(2) A plaintiff may at any time -

(a) file in the Court an amended list, of his presumptive legal representatives;

(b) nominate another person, in the place of the person nominated under clause (b) of sub-rule (1), for the purposes of that clause.

(3) A nomination made under clause (b) of sub-rule (1) shall, unless varied under clause (b) of sub-rule (2), remain in force throughout the pendency of the suit and any proceedings arising therefrom, including appeal, revision and review.

## **ORDER VIII**

### **WRITTEN STATEMENT AND SET-OFF**

1. The defendant may, and, if so required by the Court, shall at or before the first hearing or within such time as the Court may permit, present a written statement of his defence:

[Provided that the period allowed for filing the written statement shall not ordinarily exceed[thirty] days]

2. The defendant must raise by his pleading all matters, which show the suit not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality.

3. It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

4. Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

5. Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

6.-(1) Where in suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, present a written statement containing the particulars of the debt sought to be set-off.

(2) The written statement shall have the same effect as a plea in a cross-suit so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the set-off: but this shall not effect the lien, upon the amount decreed, of any plea in respect of the costs payable to him under the decree.

(3) The rules relating to a written statement by a defendant apply to a written statement in answer to a claim of set-off.

### **Illustrations**

(a) A bequeaths Rs.2,000 to B and appoints C his executor and residuary legatee. B dies and D takes out administration to B's effects. C pays Rs.1,000 as surety for D; then D sues C for the legacy. C cannot set-off the debt of Rs.1,000 against the legacy, for neither C nor D fills the same character with respect to the legacy as they fill with respect to the payment of the Rs.1,000.

(b) A dies intestate and in debt to B, C takes out administration to A's effects and B buys parts of the effects from C. In a suit for the purchase money by C against B, the latter cannot set-off the debt against the price, for C fills two different characters, one as the vendor to B, in which he sues B, and the other as representative to A.

(c) A sues B on a bill of exchange. B alleges that A has wrongfully neglected to insure B's goods and is liable to him in compensation which he claims to set-off. The amount not being ascertained cannot be set-off.

(d) A sues B on a bill of exchange for Rs.500. B holds a judgment against A for Rs.1,000. The two claims being both definite pecuniary demands may be set-off.

(e) A sues B for compensation on account of trespass. B holds a promissory note for Rs.1,000 from A and claims to set-off that amount against any sum that A may recover in the suit. B may do so for as soon as A recovers both sums as definite pecuniary demands.

(f) A and B sue C for Rs.1,000 . C cannot set-off a debt due to him by A alone.

(g) A sues B and C for Rs.1,000. B cannot set-off a debt due to him alone by A.

(h) A with the partnership firm of B and C Rs.1000. B dies leaving C surviving. A sues C for a debt of Rs.1,500 due in his separate character. C may set-off the debt of Rs.1,000.

7. Where the defendant relies upon several distinct grounds of defence or set-off founded upon separate and distinct facts, they shall be stated, as far as may be separately and distinctly.

8. Any ground of defence which has arisen after the institution of the suit or the presentation of a written statement claiming a set-off may be raised by the defendant or plaintiff, as the case may be in his written statement.

9. No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same.

10. Where any party from whom a written statement is so required fails to present the same within the time fixed by Court, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit.

[11. - (1) Every party, whether original, added or substituted, who appears in any suit or other proceeding, shall, on or before the date fixed in the summons, notice or other process served on him, file in Court a proceeding stating his address for service.

(2) Such address shall be entered in the Register of suits to be maintained under Order, IV rule 2.

(3) Rules 20, 23, 24 and 25 of Order VII shall apply, so far as may be, to addresses for service filed under this rule.

12.-(1) Where a party fails to file address for service as provided in the preceding rule, he shall be liable to have his defence, if any, struck out and to be placed in the same position as if he had not defended.

(2) The Court may pass an order under sub-rule (1) suo motu or on the application of any party.

13 - (1) In every suit of the nature referred to in rule 4, Order XXII, the written statement shall be accompanied by a statement giving -

a) the names and addresses of the persons who, in the event of the death of the defendant, may be made a party as his legal representatives;

b) the name and address of the person, who in the event of the death of the defendant, shall intimate such fact to the Court, furnish the Court with the names, particulars and addresses of the legal representatives of the defendant and make an application for the legal representatives to be made a party.

(2) A defendant may at any time -

a) file in the Court an amended list of his presumptive representatives;

b) nominate another person, in the place of the person nominated under clause (b) of sub-rule (1) for the purposes of that clause.

(3) A nomination made under clause (b) of sub-rule (1) shall, unless varied under clause (b) of sub-rule (2), remain in force throughout the pendency of the suit and any proceedings arising therefrom, including appeal, revision or review.]

## **ORDER IX**

### **APPEARANCE OF PARTIES AND CONSEQUENCE OF NON-APPEARANCE**

1. On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the Court house in person or by their respective pleaders, and the suit shall then be heard unless the hearing is adjourned to a future day fixed by the Court.

2. Where on the day so fixed it is found that the summons has not been served upon the defendant in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service, the Court may make an order that the suit be dismissed:

Provided that no such order shall be made although the summons has not been served upon the defendant, if on the day fixed for him to appear and answer he attends in person or by agent when he is allowed to appear by agent.

3. Where neither party appears when the suit is called on for hearing, the Court may make an order that the suit be dismissed.

4. Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit; or he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his not paying the court-fee and postal charges (if any) required within the time fixed before the issue of the summons, or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.

5.- [(1) Where after a summons has been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails, for a period of three months from the date of the return made to the Court by the officer ordinarily certifying to the Court returns made by the serving officers, to apply for the issue of a fresh summons the Court shall make an order that the suit be dismissed as against such defendant, unless the plaintiff has within the said period satisfied the Court that -

a) he has failed after using his best endeavours to discover the residence of the defendant who has not been served, or

b) such defendant is avoiding service of process, or

c) there is any other sufficient cause for extending the time, in which case the Court may extend the time for making such application for such period as it thinks fit.

(2) In such case the plaintiff may (subject to the law of limitation) bring a fresh suit.

6 - (1) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then -

(a) if it is proved that the summons was duly served, the Court may proceed ex parte [and pass decree without recording evidence].

(b) If it is not proved that the summons was duly served the Court shall direct a second summons to be issued and served on the defendant;

(c) If it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court and shall direct notice of such day to be given to the defendant.

(2) Where it is owing to the plaintiff's default that the summons was not duly served or was not served in sufficient time, the Court shall order the plaintiff to pay the costs occasioned by the postponement.

7. Where the Court has adjourned the hearing of the suit ex parte and the defendant at or before such hearing, appears and assigns good cause for his previous non-appearance, he may upon such terms as the Court directs as to costs or otherwise be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

8. Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

9. – (1) Where a suit is wholly or partly dismissed under rule 8. the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party.

[(3) The provisions of section 5 of the Limitation Act 1908 (IX of 1908), shall apply to applications under sub-rule (1).]

10. Where there are more plaintiffs than one and, one or more of them appear, and the others do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, or make such order as it thinks fit.

11. Where there are more defendants than one and one or more of them appear and the others do not appear the suit shall proceed, and the Court shall at the time of pronouncing judgment make such order as it thinks fit with respect to the defendants who do not appear.

12. Where a plaintiff or defendant who has been ordered to appear in person does not appear in person or show sufficient cause to the satisfaction of the Court for failing so to appear he shall be subject to all the provisions of the foregoing rules applicable to plaintiffs and defendants, respectively, who do not appear.

### **Setting aside Decree Es parte**

13. [(1)] In any case in which a decree is passed ex parte against a defendant he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:

[Provided further that no decree passed ex parte shall be set aside merely on the ground of any irregularity in the service of summons, if the Court is satisfied for reason to be accorded, that the defendant had knowledge of the date of hearing in sufficient time to appear on that date and answer the claim].

[(2) The provisions of section 5 of the Limitation Act 1908 (X of 1908), shall apply to applications under sub-rule (1)].

14. No decree shall be set aside on any such application as aforesaid unless notice thereof has been served on the opposite party.

## **ORDER X**

### **EXAMINATIONS OF PARTIES BY THE COURT**

1. At the first hearing of the suit the Court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

2. At the first hearing of the suit or at any subsequent hearing, any party appearing in person or present in Court or any person able to answer any material questions relating to the suit by whom such party or his pleader is accompanied[shall]be examined orally by the Court; and the Court may, if it thinks fit, put in the course of such examination questions suggested by either party.

3. The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record.

4.- (1) Where the pleader of any party who appears by a pleader or any such person accompanying a pleader as is referred to in

rule 2, refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day and direct that such party shall appear in person on such day.

(2) If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit.

## **ORDER XI**

### **DISCOVERY AND INSPECTION**

1. In any suit the plaintiff or defendant by leave of the Court may deliver interrogatories in writing for the examination of the opposite-parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without any order for that purpose: Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

2. On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the Court. In deciding upon such application, the Court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars or to make admissions or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the Court shall consider necessary either for disposing fairly of the suit or for saving costs.

3. In adjusting the costs of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories and if it is the opinion of the taxing officer or of the Court, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

4. Interrogatories shall be in Form No.2 in Appendix C with such variations as circumstances may require.

5. Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person,

any opposite-party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly.

6. Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited bona fide for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer.

7. Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous; and any application for this purpose may be made within seven days after service of the interrogatories.

8. Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the Court may allow.

9. An affidavit in answer to interrogatories shall be in Form No.3 in Appendix C, with such variations as circumstances may require.

10. No exception shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court.

11. Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court for an order requiring him to answer or to answer further, as the case may be. And an order may be made requiring him to answer or answer further, either by affidavit or by viva voce examination, as the Court may direct.

12. Any party may, without filing any affidavit apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be brought fit: Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

13. The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made shall specify which (if any) of the documents therein mentioned he objects to produce, and it shall be in Form No.5 in Appendix C with such variations as circumstances may require.

14. It shall be lawful for the Court at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

15. Every party to a suit shall be entitled at any time to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse which the Court shall deem sufficient for not complying with such notice, in which the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit.

16. Notice to any party to produce any documents referred to in his pleading or affidavits shall be in Form No.7 in Appendix C, with such variations as circumstances may require.

17. The party to whom such notice is given shall, within ten days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his pleader, or in the case of bankers' books or other books of account or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice shall be in Form No.8 in Appendix C, with such variations as circumstances may require.

18.-(1) Where the party served with notice under rule 15 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his pleader, the Court may, on the application of the party desiring it make an order for inspection in such place and in such manner as it may think fit: Provided that the order shall not be made when and so far as the Court shall be of the opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

(2) Any application to inspect documents, except such as are referred to in the pleadings, particulars or affidavits of the party against whom the application is made or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them and that they

are in the possession or power of the other party. The Court shall not make such order for inspection of such documents when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

19 – (1) Where inspection of any business books is applied for the Court may, if it thinks fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations; Provided that, notwithstanding that such copy has been supplied the Court may order inspection of the book from which the copy was made.

(2) Where on an application for an order for inspection privilege is claimed for any document it shall be lawful for the Court to inspect the document for the purpose of deciding as to the validity of the claim of privilege.

(3) The Court may, on the application of any party to a suit at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the application, is or are, or has or have at any time been in his possession or power, and, if not then in his possession, when he parted with the same and what has become thereof. Such application shall be made on an affidavit stated that in the belief of the deponent the party against whom the application is made has, or has at sometime had, in his possession or power the document or documents specified in the application, and that they relate to the matters in question in the suit, or to some of them.

20. Where the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any issue or question in dispute in the suit should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

21. Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defend, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect and an order may be made accordingly.

22. Any party may, at the trial of a suit, use in evidence any one or more of the answers or any part of an answer of the opposite-party to interrogatories without putting in the others or the whole of such answer: Provided always that in such case the Court may look at the whole of the answers, and if it shall be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them, it may direct them to be put in.

23. This order shall apply to minor plaintiffs and defendants, and to the next friends and guardians for the suit of persons under disability.

## **ORDER XII**

### **ADMISSIONS**

1. Any party to a suit may give notice, by his pleading or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.
2. Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs; and no costs of proving any document shall be allowed unless such notice is given, except where the omission to give the notice is in the opinion of the Court a saving of expense.
3. A notice to admit documents shall be in Form No.9 in Appendix C, with such variations as circumstances may require.
4. Any party may, by notice in writing, at any time not later than nine days before the day fixed for the hearing, call on any other party to admit, for the purposes of the suit only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the Court, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the suit may be unless the Court otherwise directs: Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular suit, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice: Provided also that the Court may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.
5. A notice to admit facts shall be in Form No.10 in Appendix C and admissions of facts shall be in Form No.11 in Appendix C, with such variations as circumstances may require.

6. Any party may, at any stage of a suit, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the Court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties: and the Court may upon such application make such order, or give such judgment as the Court may think just.

7. An affidavit of the pleader or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents of facts, shall be sufficient evidence of such admissions, if evidence thereof is required.

8. Notice to produce documents shall be in Form No.12 in Appendix C with such variations as circumstances may require. An affidavit of the pleader, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served

9. If a notice to admit or produce specifies documents which are not necessary the costs occasioned thereby shall be borne by the party giving such notice.

### **ORDER XIII**

#### **PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS**

1. – (1) The parties or their pleaders shall produce, at the first hearing of the suit, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has ordered to be produced.

(2) The Court shall receive the documents so produced: Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

[(3) On production of documents under this rule, the Court may call upon the parties to admit or deny the documents produced in the Court and record their admission or, as the case may be denial].

2. No documentary evidence in the possession or power of any party which should have been but has not been produced in accordance with the requirements of rule 1 shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof; and the Court receiving any such evidence shall record the reasons for so doing.

3. The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the ground of such rejection.

4.-(1) Subject to the provisions of the next following sub-rule there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars namely:-

- a) the number and title of the suit,
- b) the name of the person producing the document,
- c) the date on which it was produced, and
- d) a statement of its having been so admitted;

and the endorsement shall be signed or initialled by the judge.

(2) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialled by the Judge.

5-(1) Save in so far as is otherwise provided by the Banker's Books Evidence Act, 1891, where a document admitted in evidence in the suit is an entry in a letter-book or a shop-book or other account in current use, the party on whose behalf the book or account is produced may furnish a copy of the entry.

(2) Where such a document is an entry in a public record produced from a public office, or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished

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(a) where the record, book or account is produced on behalf of a party, then by that party, or

(b) where the record, book or account is produced in obedience to an order of the Court acting of its own motion, then by either or any party.

(3) Where a copy of an entry is furnished under the foregoing provisions of this rule, the Court shall, after causing the copy to be examined, compared and certified in manner mentioned in rule 17 of Order VII, mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it.

6. Where a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (a), (b) and (c) of rule 4, sub-rule (1) together with a statement of its having been rejected, and the endorsement shall be signed or initialled by the Judge.

7.-(1) Every document which has been admitted in evidence or a copy thereof where a copy has been substituted for the original under rule 5, shall form part of the record of the suit.

(2) Documents not admitted in evidence shall not form part of the record and shall be returned to the persons respectively producing them.

8. Notwithstanding anything contained in rule 5 or rule 7 of this Order or in rule 17 of Order VII, the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court for such period and subject to such conditions as the Court thinks fit.

9.-(1) Any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the document is impounded under rule 8, be entitled to receive back the same,-

(a) where the suit is one in which an appeal is not allowed, when the suit has been disposed of, and

(b) where the suit is one in which an appeal is allowed when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred, when the appeal has been disposed of:

Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying therefor delivers to the proper officer a certified copy to be substituted for the original and undertakes to produce the original if required to do so:

Provided also that no document shall be returned which, by force of the decree, has become wholly void or useless.

(2) On the return of a document admitted in evidence, a receipt shall be given by the person receiving it.

10.-(1) The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

(2) Every application made under this rule shall (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

(3) Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit.

10. The provisions herein contained, as to documents shall, so far as may be, apply to all other material objects producible as evidence.

#### **ORDER XIV**

#### **SETTLEMENT OF ISSUES AND DETERMINATION OF SUIT ON**

#### **ISSUES OF LAW OR ON ISSUES AGREED UPON**

1.-(1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds : (a) issues of fact, (b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.

2. Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first,

and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

3. The Court may frame the issues from all or any of the following materials-

(a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties;

(b) allegations made in the pleadings or in answers to interrogatories delivered in the suit;

(c) the contents of documents produced by the either party.

4. Where the Court is of opinion that the issues cannot be correctly framed without the examination of some person not before the Court or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, and may (subject to any law for the time being in force) compel the attendance of any person or the production of any document by the person in whose possession or power it is by summons or other process.

5-(1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, And all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

6. Where the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter, into an agreement in writing that, upon the finding of the Court in the affirmative or the negative of such issue-

(a) a sum of money specified in the agreement or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement;

(b) some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct; or

(c) one or more of the parties shall do or abstain from doing some particular act specified in the agreement and relating to the matter in dispute.

7. Where the Court is satisfied, after making such inquiry as it deems proper -

(a) that the agreement was duly executed by the parties;

(b) that they have a substantial interest in the decision of such question as aforesaid, and

(c) that the same is fit to be tried and decided,

it shall proceed to record and try the issue and state its finding or decision thereon in the same manner as if the issue had been framed by the Court;

and shall, upon the finding or decision on such issue, pronounce judgement according to the terms of the agreement; and, upon the judgment so pronounced, a decree shall follow.

## **ORDER XV**

### **DISPOSAL OF THE SUIT AT THE FIRST HEARING**

1. Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.

2. Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or of fact, the Court may at once pronounce judgment for or against such defendant and the suit shall proceed only against the other defendants.

3-(1) Where the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court is satisfied that no further argument or evidence than the parties can at once adduce is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues, and if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit:

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them objects.

(2) Where the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a

day for the production of such further evidence, or for such further argument as the case requires.

4. Where the summons has been issued for the final disposal of the suit and either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once pronounce judgment or may, if it thinks fit, after framing and recording issues adjourn the suit for the production of such evidence as may be necessary for its decision upon such issues.

## **ORDER XVI**

### **SUMMONING AND ATTENDANCE OF WITNESSES**

[1 - (1) Not later than seven days after the settlement of issues, the parties shall present in Court a [certificate of readiness to produce evidence alongwith a] list of witnesses whom they propose to call either to give evidence or to produce documents.

(2) A party shall not be permitted to call witnesses other than those contained in the said list, except with the permission of the Court and after showing good cause for the omission of permission, it shall record reasons for so doing.

(3) On application to the Court or such officer as it appoints in this behalf, the parties may obtain summons for persons whose attendance is required in Court:

Provided that no summons shall be issued for service on a person under rule 8 unless an application in that behalf is made not later than fourteen days prior to the date fixed for the hearing of the suit and the necessary expenses for the summoning of such person are deposited].

2.-(1) The party applying for a summons shall, before the summons is granted and within a period to be fixed, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.

(2) In determining the amount payable under this rule, the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

(3) Where the Court is subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to any rules made in that behalf.

3. The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

4-(1) Where it appears to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses or reasonable remuneration, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and in case of default in payment, may order such sum to be levied by attachment and sale of the movable property of the party obtaining the summons; or the Court may discharge the person summoned, without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

(2) Where it is necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and in default of such deposit being made, may order such sum to be levied by attachment and sale of the movable property of such party; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

5. Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document which the person summoned is called on to produce, shall be described in the summons with reasonable accuracy.

6. Any person may be summoned to produce a document, without being summoned to give evidence ; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

7. Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his possession or power.

[7-A.-(1) Except where it appears to the Court that a summons under this Order should be served by the Court in the same manner as a summons to a defendant, the Court shall make over for service all summons under this Order to the party applying therefor.

(2) The service shall be effected by or on behalf of such party by delivering or tendering to the witness in person a copy thereof signed by the Judge or

such officer as he appoints in this behalf and sealed with the seal of the Court.

(3) Rules 16 and 18 of Order V shall apply to summons personally served under this rule, as though the person effecting service were a serving officer].

[8. Every summons under this Order, not being a summons made over to a party for service under rule 7-A of this Order, shall be served as nearly as may be in the same manner as a summons to a defendant, and the rules in Order V as to proof of service shall apply thereto].

9. Service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

10-(1) Where a person to whom a summons has been issued either to attend to give evidence or to produce a document fails to attend or to produce the document in compliance with such summons, the Court shall, if the certificate of the serving-officer has not been verified by affidavit, and may, if it has been so verified, examine the serving-officer on oath, or cause him to be so examined by another Court, touching the service or non-service of the summons.

(2) Where the Court sees reason to believe that such evidence or production is material and that such person has without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(3) In lieu of or at the time of issuing such proclamation or at any time afterwards,. The Court may, in its discretion, issue a warrant either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under rule 12:

Provided that no Court of Small Causes shall make an order for the attachment of immovable property.

11. Where, at any time after the attachment of his property, such person appears and satisfies the Court,-

(a) that he did not, without lawful excuse, fail to comply with the summons or intentionally avoid service, and

(b) where he has failed to attend at the time and place named in a proclamation issued under the last preceding rule, that he had no notice of such proclamation in time to attend,

the Court shall direct that the property be released from attachment and shall make such order as to the costs of the attachment as it thinks fit.

12. The Court may, where such person does not appear, or appears but fails so to satisfy the Court, impose upon him such fine not exceeding [two thousand] rupees as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may order his property, or any part thereof, to be attached and sold or, if already attached under rule 10, to be sold for the purpose of satisfying all costs of such attachment, together with the amount of the said fine, if any:

Provided that, if the person whose attendance is required pays into Court the costs and fine aforesaid, the Court shall order the property to be released from attachment.

13. The provisions with regard to the attachment and sale of property in the execution of a decree shall, so far as they are applicable be deemed to apply to any attachment and sale under this Order as if the person whose property is so attached were a judgment-debtor.

14. Subject to the provisions of this Court as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it is necessary to examine any person other than a party to the suit and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed and may examine him as a witness or require him to produce such document.

15. Subject as last aforesaid whoever is summoned to appear and give evidence in a suit shall attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document shall either attend to produce it, or cause it to be produced, at such time and place.

16 – (1) A person so summoned and attending shall unless the Court otherwise directs attend at each hearing until the suit has been disposed of.

(2) On the application of either party and the payment through the Court of all necessary expenses (if any), the Court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security, may order him to be detained in the civil prison.

17. The provisions of rules 10 to 13 shall, so far as they are applicable, be deemed to apply to any person who having attended in compliance with a summons departs, without lawful excuse, in contravention of rule 16.

18. Where any person arrested under a warrant is brought before the Court in custody and cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him, and, in default of his giving such bail or security, may order him to be detained in the civil prison.

[19. A person shall not be asked by a Court to attend in person to give evidence unless he resides at any place in Pakistan].

20. Where any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and therein in his possession or power, the Court may pronounce judgment against him or make such order in relation to the suit as it thinks fit.

21. Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable.

## **ORDER XVII**

### **ADJOURNMENTS**

1.-(1) The Court may, if sufficient cause is shown at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit.

(2) In every such case the Court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment:

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded.

2. Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit.

3. Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding each default, proceed to decide the suit forthwith.

[4. Where a suit or proceeding is set down for a day which is a holiday, the parties thereto shall appear in the Court on the day next following that day, or, when two or more successive days are holidays, on the day next following the last of such successive days, and the Court may then either proceed with the suit on such day, or fix some other day thereafter.]

[5. When on day the presiding officer of the Court is absent by reason of illness or any other cause, the parties to the suit or proceeding set down for that day(notwithstanding the knowledge that the presiding officer would be absent) shall appear in the Court in the |Courthouse on that day and the ministerial officer of the Court authorized in that behalf shall hand over to the parties slips of paper specifying the other date fixed for proceeding with the suit or proceeding and signed by him].

## **ORDER XVIII**

### **HEARING OF THE SUIT AND EXAMINATION OF WITNESSES**

1. The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

2-(1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

(2) The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case.

(3)The party beginning may then reply generally on the whole case.

3. Where there are several issues, the burden of proving some of which lies on the other party the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence

so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

4. The evidence of the witnesses in attendance shall be taken orally in open Court in the presence and under the personal direction and superintendence of the Judge.

5. In cases in which an appeal is allowed the evidence of each witness shall be taken down in writing, in the language of the Court, by or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over in the presence of the Judge and of the witness, and the Judge shall, if necessary, correct the same, and shall sign it.

6. Where the evidence is taken down in a language different from that in which it is given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it is given.

7. Evidence taken down under section 138 shall be in the form prescribed by rule 5 and shall be read over and signed and, as occasion may require, interpreted and corrected as if it were evidence taken down under that rule.

8. Where the evidence is not taken down in writing by the Judge, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes, and such memorandum shall be written and signed by the Judge and shall form part of the record.

9. Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such as appear by pleaders, do not object to have such evidence as is given in English taken down in English, the Judge may so take it down.

10. The Court may, of its own motion or on the application of any party or his pleader, take down any particular question and answer, or any objection to any question, if there appears to be any special reason for so doing.

11. Where any question put to a witness is objected to by a party or his pleader, and the Court allows the same to be put, the Judge shall take down the question the answer, the objection and the name of the person making it, together with the decision of the Court thereon.

12. The Court may record such remarks as it thinks material respecting the demeanor of any witness while under examination.

13. In cases in which an appeal is not allowed, it shall not be necessary to take down the evidence of the witnesses in writing at length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Judge and shall form part of the record.

14.-(1) Where the Judge is unable to make a memorandum as required by this Order, he shall cause the reason of such inability to be recorded, and shall cause the memorandum to be made in writing from his dictation in open Court.

(2) Every memorandum so made shall form part of the record.

15-(1) Where a Judge is prevented by death, transfer or other cause from concluding the trial of a suit, his successor may deal with any evidence or memorandum taken down or made under the foregoing rules as if such evidence or memorandum had been taken down or made by him or under his direction under the said rules and may proceed with the suit from the stage at which his predecessor left it.

(2) The provisions of sub-rule (1) shall, so far as they are applicable, be deemed to apply to evidence taken in a suit transferred under section 24.

16-(1) Where a witness is about to leave the jurisdiction of the Court, or other sufficient cause is shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of any party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided.

(2) Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

(3) The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and the Judge shall, if necessary, correct the same, and shall sign it, and it may then be read at any hearing of the suit.

17. The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.

18. The Court may at any stage of a suit inspect any property or thing concerning which any question may arise.

## **ORDER XIX**

## **AFFIDAVITS**

1. Any Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable:

Provided that where it appears to the Court that either party bona fide desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

2-(1) Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the deponent.

(2) Such attendance shall be in Court, unless the deponent is exempted from personal appearance in Court, or the Court otherwise directs.

3.(1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted; provided that the grounds thereof are stated.

(2) The cost of every affidavit which shall unnecessarily set forth matter of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party filing the same.

## **ORDER XX**

### **JUDGMENT AND DECREE**

[1 (1) On completion of evidence, the Court, shall fix a date,. Not exceeding fifteen days, for hearing of arguments of parties.

(2) The Court shall, after the case has been heard, pronounce judgment in open Court, either at once or on some future day not exceeding thirty days, for which due notice shall be given to the parties or their advocates].

2. A Judge may pronounce a judgment written but not pronounced by his predecessor.

3. The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it and, when once signed, shall not afterwards be altered or added to save as provided by section 152 or on review,

4.(1) Judgements of a Court of Small Causes need not contain more than the points for determination and the decision thereon.

(2) Judgements of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

5. In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

6.-(1) The decree shall agree with the judgement; it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit.

(2) The decree shall also state the amount of costs incurred in the suit, and by whom or out of what property and in what proportions such costs are to be paid.

(3) The Court may direct that the costs payable to one party by the other shall be set-off against any sum which is admitted or found to be due from the former to the latter.

7. The decree shall bear date the day on which the judgement was pronounced, and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgement, he shall sign the decree

8. Where a Judge has vacated office after pronouncing judgement but without signing the decree a decree drawn up in accordance with such judgement may be signed by his successor or, if the Court has ceased to exist, by the Judge of any Court to which such Court was subordinate.

9. Where the subject-matter of the suit is immovable property, the decree shall contain a description of such property sufficient to identify the same, and where such property can be identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.

10. Where the suit is for movable property, and the decree is for the delivery of such property, the decree shall also state the amount of money to be paid as an alternative if delivery cannot be had.

11.-(1) Where and in so far as a decree is for the payment of money, the Court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or

shall be made by installments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.

(2) After the passing of any such decree the Court may, on the application of the judgment-debtor and with the consent of the decree-holders, order that payment of the amount decreed shall be postponed or shall be made by installments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor, or the taking of security from him, or otherwise, as it thinks fit.

12-(1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree-

a) for the possession of the property;

b) for the rent or mesne profits, which have accrued on the property during a period prior to the institution of the suit or directing an inquiry as to such rent or mesne profits;

c) directing an inquiry as to rent or mesne profits from the institution of the suit until-

i. the delivery of possession to the decree-holder;

ii. the relinquishment of possession by the judgement-debtor with notice to the decree-holder through the Court; or

iii. the expiration of three years from the date of the decree whichever event first occurs.

(2) Where an inquiry is directed under clause(b) or clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry.

13.-(1) Where a suit is for an account of any property and for its due administration under the decree of the Court, the Court shall, before passing the final decree, pass a preliminary decree, ordering such accounts and inquiries to be taken and made, and giving such other directions as it thinks fit.

(2) In the administration by the Court of the property of any deceased person, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being, within the local limits of the Court in which the administration suit is pending

with respect to the estates of persons adjudged or declared insolvent; and all persons who in any such case would be entitled to be paid out of such property, may come in under the preliminary decree, and make such claims against the same as they may respectively be entitled to by virtue of this Code.

14-(1) Where the Court decrees a claim to pre-emption in respect of a particular sale of property and the purchase-money has not been paid into Court the decree shall-

a) specify a day on or before which the purchase-money shall be so paid, and

b) direct that on payment into Court of such purchase-money, together with the costs(if any) decreed against the plaintiff, on or before the day referred to in clause(a), the defendant shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such payment, but that, if the purchase-money and the costs (if any) are not so paid the suit shall be dismissed with costs.

(2) Where the Court has adjudicated upon rival claims to pre-emption, the decree shall direct,-

a) If and in so far as the claims decreed are equal in decree that the claim of each pre-emptor complying with the provisions of sub-rule (1) shall take effect in respect of a proportionate share of the property including any proportionate share in respect of which the claim of any pre-emptor failing to comply with the said provisions would, but for such default, have taken effect; and

b) If and in so far as the claims decreed are different in degree, that the claim of the inferior pre-emptor shall not take effect unless and until the superior pre-emptor has failed to comply with the said provisions.

15. Where a suit is for the dissolution of a partnership or the taking of partnership accounts the Court, before passing a final, decree, may pass as preliminary decree declaring the proportionate shares of the parties, fixing the day on which the partnership shall stand dissolved or be deemed to have been dissolved, and directing such accounts to be taken, and other acts to be done, as it thinks fit.

16. In a suit for an account of pecuniary transactions between a principal and an agent, and in any other suit not herein-before provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before passing its final decree, pass a preliminary decree directing such accounts to be taken as it thinks fit.

17. The Court may either by the decree directing an account to be taken or by any subsequent order give special directions with regard to the mode in which the account is to be taken or vouched and in particular may direct that in taking the account the books of account in which the accounts in question have been kept shall be taken as prima facie evidence of the truth of the matters therein contained with liberty to the parties interested to take such objection thereto as they may be advised.

18. Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then-

1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54;

2) if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties interested in the property and giving such further directions as may be required.

19-(1) Where the defendant has been allowed a set-off against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

(2) Any decree passed in a suit in which a set-off is claimed shall be subject to the same provisions in respect of appeal to which it would have been subject if no set-off had been claimed.

(3) The provisions of this rule shall apply whether the set-off is admissible under rule 6 of Order VIII or otherwise.

20. Certified copies of the judgment and decree shall be furnished to the parties on application to the Court and at their expense.

## **ORDER XXI**

### **EXECUTION OF DECREES AND ORDERS**

#### Payment under Decrees

1.-(1) All money payable under a decree shall be paid as follows, namely:-

a) into the Court whose duty it is to execute the decree;

or

b) out of Court to the decree-holder [through a bank or by postal money order or evidence by writing signed by the decree- holder or his authorized agent];  
or

c) otherwise as the Court which made the decree directs.

(2) Where any payment is made under clause (a) of sub-rule (1), notice of such payment shall be given to the decree-holder.

2-(1) Where any money payable under a decree of any kind is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

(2) The judgment-debtor also may inform the Court of such payment or adjustment and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

[(3) Any payment not made in the manner provided in rule 1 or any adjustment not made in writing shall not be recognized by the Court executing the decree.]

#### Courts executing Decrees

3. Where immovable property forms one estate or tenure situate within the local limits of the jurisdiction of two or more Courts, any one of such Courts may attach and sell the entire estate or tenure.

4. [Transfer to Court of Small Causes.] Omitted by the A.O., 1949.

5. Where the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed such decree, such Court shall send the same directly to the former Courts. But, where the Court to which the decree is to be sent for execution is situate in a different district, the Court which passed it shall send it to the District Court of the district in which the decree is to be executed.

6. The Court sending a decree for execution shall send -

a) a copy of the decree;

b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unsatisfied; and

c) a copy of any order for the execution of the decree, or, if no such order has been made, a certificate to that effect.

7. The Court to which a decree is so sent shall cause such copies and certificates to be filed, without any further proof of the decree or order for execution, or of the copies thereof unless the Court for any special reasons to be recorded under the hand of the Judge, requires such proof.

8. Where such copies are so filed, the decree or order may, if the Court to which it is sent is the District Court, be executed by such Court or be transferred for execution to any subordinate Court of competent jurisdiction.

9. Where the Court to which the decree is sent for execution is a High Court, the decree shall be executed by such Court in the same manner as if it had been passed by such Court in the exercise of its ordinary original civil jurisdiction.

#### Application for Execution

10. Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree to or the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court then to such Court or to the proper officer thereof.

11. (1) Where a decree is for the payment of money the Court may, on the oral application of the decree-holder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgment-debtor prior to the preparation of a warrant if he is within the precincts of the Court.

(2) Save as otherwise provided by sub-rule (1), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely -

a) the number of the suit;

b) the names of the parties;

- c) the date of the decree;
- d) whether any appeal has been preferred from the decree;
- e) whether any, and (if any), what payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;
- f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;
- g) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed;
- h) the amount of the costs (if any) awarded;
- i) the name of the person against whom execution of the decree is sought; and
- j) the mode in which the assistance of the Court is required, whether -
  - i) by the delivery of any property specifically decreed;
  - ii) by the attachment and sale, or by the sale without attachment, of any property;
  - iii) by the arrest and detention in prison of any person;
  - iv) by the appointment of a receiver;
  - v) otherwise as the nature of the relief granted may require.

(3) The Court to which an application is made under sub-rule (2) may require the applicant to produce a certified copy of the decree.

12. Where an application is made for the attachment of any movable property belonging to a judgment-debtor but not in his possession, the decree- holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same.

13. Where an application is made for the attachment of any immovable property belonging to a judgment-debtor, it shall contain at the foot-

- a) a description of such property sufficient to identify the same and, in case such property can be identified by boundaries or numbers

in a record of settlement or survey, a specification of such boundaries or numbers; and

b) a specification of the judgment-debtor's share or interest in such property to the best of the belief of the applicant, and so far as he has been able to ascertain the same.

14. Where an application is made for the attachment of any land which is registered in the office of the Collector, the Court may require the applicant to produce a certified extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest in the land or its revenue, or as liable to pay revenue for the land, and the shares of the registered proprietors.

15.-(1) Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.

(2) Where the Court sees sufficient cause for allowing the decree to be executed on an application made under this rule, it shall make such order as it deems necessary for protecting the interest of the persons who have not joined in the application.

16. Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder;

Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution;

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.

17.- (1) On receiving an application for the execution of a decree as provided by rule 11, sub-rule(2), the Court shall ascertain whether such of the requirements of rules 11 to 14 as may be applicable to the case have been complied with; and if they have not been complied with, the Court may reject the application, or may allow the defect to be remedied then and there or within a time to be fixed by it.

(2) Where an application is amended under the provisions of sub-rule (1), it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented.

(3) Every amendment made under this rule shall be signed or initialled by the Judge.

(4) When the application is admitted, the Court shall enter in the proper register a note of the application and the date on which it was made, and shall, subject to the provisions hereinafter contained, order execution of the decree according to the nature of the application;

Provided that, in the case of decree for the payment of money, the value of the property attached shall, as nearly as may be, correspond with the amount due under the decree.

18 – (1) Where applications are made to a Court for the execution of cross-decrees in separate suits for the payment of two sums of money passed between the same parties and capable of execution at the same time such Court, then -

a) if the two sums are equal, satisfaction shall be entered upon both decrees; and

b) if the two sums are unequal, execution may be taken out only by the holder of the decree for the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction of the decree for the smaller sum.

(2) This rule shall be deemed to apply where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

(3) This rule shall not be deemed to apply unless -

a) the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other and each party fills the same character in both suits; and

b) the sums due under the decree are definite.

(4) The holder of a decree passed against several persons jointly and severally may treat it as a cross-decree in relation to a decree passed against him singly in favour of one or more of such persons.

## **Illustrations**

(a) A holds a decree against B for Rs1,000. B holds a decree against A for the payment of Rs.1000 in case A fails to deliver certain goods at a future day. B cannot treat his decree as a cross-decree under this rule.

(b) A and B, co-plaintiffs, obtain a decree for Rs.1,000 against C, and C obtains a decree for kRs.1,000 against B. C cannot treat his decree as a cross-decree under this rule.

(c) A, obtains a decree against B for Rs.1,000. C who is a trustee for B, obtains a decree on behalf of B against A for Rs.1,000. B cannot treat C's decree as a cross-decree under this rule.

(d) A, B, C, D and E are jointly and severally liable for Rs.1,000 under a decree obtained by F. A obtains a decree for Rs.100 against F singly and applies for execution to the Court in which the joint-decree is being executed. F may treat his joint-decree as a cross-decree under this rule.

19. Where application is made to a Court for the execution of a decree under which two parties are entitled to recover sums of money from each other, then, -

a) if the two sums are equal, satisfaction for both shall be entered upon the decree; and

b) if the two sums are unequal, execution may be taken out only by the party entitled to the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered upon the decree.

20. The provisions contained in rules 18 and 19 shall apply to decrees for sale in enforcement of a mortgage or charge.

21. The Court may, in its discretion, refuse execution at the same time against the person and property of the judgment-debtor.

22-(1) Where an application for execution is made -

a) more than one year after the date of the decree,  
or

b) against the legal representative of a party to the decree, [or where an application is made for execution of a decree filed under the provisions of section 44-A] the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him:

Provided that no such notice shall be necessary in consequence of more than one year having elapsed between the date of the decree and the application for execution if the application is made within one year from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him:

(2) Nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.

23. (1) Where the person to whom notice is issued under the last preceding rule does not appear or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

(2) Where such person offers any objection to the execution of the decree, the Court shall consider such objection and make such order as it thinks fit.

### **[Objection to Execution**

23-A . An objection by the judgment-debtor to the execution of a decree shall not be considered by the Court unless -

a) in case of a decree for the payment of money, he either deposits the decretal amount in Court or furnishes security for its payment; and

b) in the case of any other decree, he furnishes security for the due performance of the decree]

### Process for Execution

24. (1) When the preliminary measures (if any) required by the foregoing rule have been taken, the Court shall, unless it sees cause to the contrary, issue its process for the execution of the decree.

(2) Every such process shall bear date the day on which it is issued, and shall be signed by the Judge or such officer as the Court may appoint in this behalf, and shall be sealed with the seal of the Court and delivered to the proper officer to be executed.

(3) In every such process a day shall be specified on or before which it shall be executed.

25. (1) The officer entrusted with the execution of the process shall endorse thereon the day on, and the manner in, which it was executed, and, if the latest day specified in the process for the return thereof has been exceeded, the reason of the delay, or, if it was not executed, the reason why it was not executed, and shall return the process with such endorsement to the Court.

(2) Where the endorsement is to the effect that such officer is unable to execute the process, the Court shall examine him touching his alleged inability, and, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result.

#### Stay of Execution

26. (1) The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or, the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

(2) Where the property or person of the judgment-debtor has been seized under an execution the Court which issued the execution may order the restitution of such property or the discharge of such person pending the result of the application.

[(3) - Omitted].

27. No order of restitution or discharge under rule 26 shall prevent the property or person of a judgment-debtor from being retaken in execution of the decree sent for execution.

28. Any order of the Court by which the decree was passed, or of such Court of appeal as aforesaid, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution.

29. Where a suit is pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided.

## **Mode of Execution**

30. Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in [...] prison of the judgment-debtor, or by the attachment and sale of his property, or by the both.

31. (1) Where the decree is for any specific movable, or for any share in a specific movable, it may be executed by the seizure, if practicable, of the movable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the detention in [...] prison of the judgment-debtor, or by the attachment of his property, or by both.

(2) Where any attachment under sub-rule (1) has remained in force for six months if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed by the decree to be paid as an alternative to delivery of movable property, such amount, and, in other cases, such compensation as it thinks fit, and shall pay the balance (if any), to the judgment-debtor on his application.

(3) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of six months from the date of the attachment, no application to have the property sold has been made, or if made, has been refused, the attachment shall cease.

32. (1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has willfully failed to obey it the decree may be enforced [ in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction] by his detention in [...]prison, or by the attachment of his property, or by both.

(2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation, or with the leave of the Court, by the detention in [...] prison of the directors or other principal officers thereof or by both attachment and detention.

(3)Where any attachment under sub-rule (1) or sub-rule(2) has remained in force for one year if the judgement debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award

to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any), to the judgment-debtor on his application.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of one year from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

(5) Where decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court. At the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.

#### Illustrations

A, a person of little substance, erects a building which renders uninhabitable a family mansion belonging to B. A in spite of his detention in prison and the attachment of his property, declines to obey a decree obtained against him by B and directing him to remove the building. The Court is of opinion that no sum realizable by the sale of A's property would adequately compensate B for the depreciation in the value of his mansion. B may apply to the Court to remove the building and may recover the cost of such removal from A in the execution-proceedings.

33. (1) Notwithstanding anything in rule 32, the Court either at the time of passing a decree [ against a husband] for the restitution of conjugal rights or at any time afterwards, may order that the decree [ shall be executed in the manner provided in this rule].

(2) Where the Court has made an order under sub-rule (1)\*\*\* it may order that, in the event of the decree not being obeyed within such period as may be fixed in this behalf, the judgment-debtor shall make to the decree-holder such periodical payments as may be just, and, if it thinks fit, require that the judgement-debtor shall, to its satisfaction, secure to the decree-holder such periodical payments.

(3)The Court may from time to time vary or modify any order made under sub-rule (2) for the periodical payment of money, either by altering the times of payment or by increasing or diminishing the amount, or may temporarily suspend the same as to the whole or any part of the money so ordered to be paid, and again revive the same, either wholly or in part as it may think just.

(4) Any money ordered to be paid under this rule may be recovered as though it were payable under a decree for the payment of money.

34.(1) Where a decree is for the execution of a document or for the endorsement of a negotiable instrument and the judgment-debtor neglects or refuses to obey the decree, the decree-holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the Court.

(2) The Court shall thereupon cause the draft to be served on the judgment-debtor together with a notice requiring his objections (if any) to be made within such time as the Court fixes in this behalf.

(3) Where the judgement-debtor objects to the draft, his objections shall be stated in writing within such time, and the Court shall make such order approving or altering the draft, as it thinks fit.

(4) The decree-holder shall deliver to the Court a copy of the draft with such alterations (if any) as the Court may have directed upon the proper stamp-paper if a stamp is required by the law for the time being in force; and the judge or such officer as may be appointed in this behalf shall execute the document so delivered.

(5) The execution of a document or the endorsement of a negotiable instrument under this rule may be in the following form, namely:-

"C.D., Judge of the Court of

(or as the case may be), for A. B., in a suit by E.F. against A.B." and shall have the same effect as the execution of the document or the endorsement of the negotiable instrument by the party ordered to execute or endorse the same.

(6) The Court, or such officer as it may appoint in this behalf, shall cause the document to be registered if its registration is required by law for the time being in force or the decree-holder desires to have it registered, and may make such order as it thinks fit as to the payment of the expenses of the registration.

35. (1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

(2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by

beat of drum, or other customary mode, at some convenient place, the substance of the decree.

(3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.

36. Where a decree is for the delivery of any immovable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, the substance of the decree in regard to the property.

Arrest and Detention in [...] Prison

37. (1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in [...] prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court [shall, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be [detained in] prison.

[Provided that such notice shall not be necessary if the Court is satisfied, by affidavit, or otherwise, that with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court.]

(2) Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor.

38. Every warrant for the arrest of a judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the cost (if any) to which he is liable, be sooner paid.

39. [Omitted by Civil Laws (Reforms) Act (XIV of 1994), S.11(7) (vi)].

40. (1) When a judgment-debtor appears before the Court in obedience to a notice issued under rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money, the Court shall proceed to hear the decree-holder and take all such evidence as may be produced by him in support of his application for execution, and shall then give the judgment-debtor an opportunity of showing cause why he should not be [detained in] prison.

(2) Pending the conclusion of the inquiry under sub-rule

(1) the Court may, in its discretion, order the judgment-debtor to be detained in the custody of an officer of the Court or release him on his furnishing security to the satisfaction of the Court for his appearance when required.

(3) Upon the conclusion of the inquiry under sub-rule

(1) the Court may, subject to the provisions of section 51 and to the other provisions of this Code, make an order for the detention of the judgment-debtor in [...] prison and shall in that event cause him to be arrested if he is not already under arrest:

Provided that in order to give the judgment-debtor an opportunity of satisfying the decree, the Court may, before making the order of detention, leave the judgment-debtor in the custody of an officer of the Court for a specified period not exceeding fifteen days or release him on his furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.

(4) A judgment-debtor released under this rule may be re-arrested.

(5) When the Court does not make an order of detention under sub-rule (3), it shall disallow the application and, if the judgment-debtor is under arrest, direct his release.]

#### Attachment of Property

41. Where a decree is for the payment of money the decree-holder may apply to the Court for an order that –

- a) the judgment-debtor, or
- b) in the case of a corporation, any officer thereof, or
- c) any other person,

be orally examined as to whether any or what debts are owing to the judgment-debtor and whether the judgment-debtor has any and what other property or means of satisfying the decree; and the Court may make an order for the attendance

and examination of such judgment-debtor or officer or other person, and for the production of any books or documents.

42. Where a decree directs an inquiry as to rent or mesne profits or any other matter, the property of the judgment-debtor may, before the amount due from him has been ascertained, be attached, as in the case of an ordinary decree for the payment of money.

43. Where the property to be attached is movable property, other than agricultural produce, in the possession of the judgment-debtor the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:

Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping in custody is likely to exceed its value, the attaching officer may sell it at once.

44. Where the property to be attached is agricultural produce, the attachment shall be made affixing a copy of the warrant of attachment,-

a) where such produce is a growing crop, on the land on which such crop has grown or

b) where such produce has been cut or gathered, on the threshing-floor or place for treading out grain or the like or fodder-stack on or in which it is deposited,

and another copy on the outer door or on some other conspicuous part of the house in which the judgment-debtor ordinarily resides or, with the leave of the Court, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain or in which he is known to have last resided or carried on business or personally worked for gain; and the produce shall thereupon be deemed to have passed into the possession of the Court.

45. (1) Where agricultural produce is attached, the Court shall make such arrangements for the custody thereof as it may deem sufficient and, for the purpose of enabling the Court to make such arrangements every application for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered.

(2) Subject to such conditions as may be imposed by the Court in this behalf either in the order of attachment or in any subsequent order, the judgment-debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it; and if the judgment-debtor fails to do all or any of such acts, the decree-holder may, with the permission of the Court and subject to the like conditions, do all or any of them either

by himself or by any person appointed by him in this behalf, and the costs incurred by the decree-holder shall be recoverable from the judgment-debtor as if they were included in, or formed part of, the decree.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed from the soil.

(4) Where an order for the attachment of a growing crop has been made a considerable time before the crop is likely to be fit to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, in its discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

46. (1) In the case of -

a) a debt not secured by a negotiable instrument,

b) a share in the capital of a corporation,

c) other movable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court,

the attachment shall be made by a written order prohibiting,

-

i) in the case of debt the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Court;

ii) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;

iii) in the case of the other movable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

(2) A copy of such order shall be affixed on some conspicuous part of the Court-house and another copy shall be sent in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation, and, in the case of the other movable property (except as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under clause (I) of sub-rule (1) may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

47. Where the property to be attached consists of the share or interest of the judgment-debtor in movable property belonging to him and another as co-owners, the attachment shall be made by a notice to the judgment-debtor prohibiting him from transferring the share or interest or charging it in any way.

48.-(1) Where the property to be attached is the salary or allowance of a [servant of the [State] ] or a servant of a railway company or local authority, the Court, whether the judgment-debtor or the disbursing officer is or is not within the local limits of the Court's jurisdiction, may order that the amount shall, subject to the provisions of section 60, be withheld from such salary or allowances either in one payment or by monthly instalments as Court may direct; and upon notice of the order to such officer as [the appropriate Government may by notification in the official Gazette] appoint [in this behalf,-

a) where such salary or allowances are to be disbursed within the local limits to which this Code for the time being extends, the officer or other person whose duty it is to disburse the same shall withhold and remit to the Court the amount due under the order, or the monthly instalments, as the case may be;

b) where such salary or allowances are to be disbursed beyond the said limits, the officer or other person within those limits whose duty it is to instruct the disbursing authority regarding the amount of the salary or allowances to be disbursed shall remit to the Court the amount due under the order, or the monthly instalments, as the case may be, and shall direct the disbursing authority to reduce the aggregate of the amounts from time to time be disbursed by the aggregate of the amounts from time to time remitted to the Court].

(2) Where the attachable proportion of such salary or allowances is already being withheld and remitted to a Court in pursuance of a previous and unsatisfied order of attachment, the officer appointed by [the appropriate Government] in this behalf shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment.

(3) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2), shall, without further notice or other process, bind [the appropriate Government] or the railway company or local authority, as the case may be, while the judgment-debtor is within the local limits to which this Code for the time being extends and while he is beyond those limits if he is in receipt of any salary or allowances payable out of [the revenues of the Central Government or a Provincial Government]

or the funds of a railway company carrying on business in any part of [Pakistan or local authority in [Pakistan]; and [the appropriate Government] or the railway company or local authority, as the case may be, shall be liable for any sum paid in contravention of this rule.

[Explanation - In this rule "appropriate Government" means -

i. as respects any [person] in the service of the Central Government, or any servant of a "railway or of a cantonment authority or of the port authority of a major port, the Central Government;

ii. \* \* \* \* \*

iii. as respects any other [servant of the [State] or a servant of any other railway or local authority the Provincial Government]

49. -(1) Save as otherwise provided by this rule, property belonging to a partnership shall not be attached or sold in execution of a decree other than a decree passed against the firm or against the partners in the firm as such.

(2) The Court may, on the application of the holder of a decree against a partner, make an order charging the interest of such partner in the partnership property and profits with payment of the amount due under the decree, and may, by the same or a subsequent order, appoint a receiver of the share of such partner in the profits (whether already declared or accruing) and of any other money which may be coming to him in respect of the partnership, and direct accounts and inquiries and make an order for the sale of such interest or other orders as might have been directed or made if a charge had been made in favour of the decree-holder by such partner, or as the circumstances of the case may require.

(3) The other partner or partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

(4) Every application for an order under sub-rule (2) shall be served on the judgment-debtor and on his partners or such of them as are within [Pakistan].

(5) Every application made by any partner of the judgment-debtor under sub-rule (3) shall be served on the decree-holder and on the judgment-debtor and on such of the other partners as do not join in the application and as are within [Pakistan].

(6) Service under sub-rule (4) or sub-rule(5) shall be deemed to be service on all the partners and all orders made on such applications shall be similarly served.

50 – (1) Where a decree has been passed against a firm execution may be granted -

a) against any property of the partnership;

b) against any person who has appeared in his own name under rule 6 or rule 7 of Order XXX or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;

c) against any person who has been individually served as a partner with a summons and has failed to appear:

Provided that nothing in this sub-rule shall be deemed to limit or otherwise affect the provisions of section 247 of the Contract Act. 1972.

(2) Where the decree-holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in sun-rule (1), clauses (b) and (c), as being a partner in the firm he may apply to the Court which passed the decree for leave, and where the liability is not disputed, such Court may grant such leave, or where such liability, is disputed, may order that the liability of such person be tried and determined in any manner in which any issue in a suit may be tried and determined.

(3) Where the liability of any person has been tried and determined under sub-rule (2), the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(4) Save as against any property of the partnership, a decree against a firm shall not release, render liable or otherwise affect any partner therein unless he has been served with a summons to appear and answer.

51. Where the property is a negotiable instrument not deposited in a Court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to further orders of the Court.

52. Where the property to be attached is in the custody of any Court or public officer, the attachment shall be made by a notice to such court or officer, requesting that such property and any interest or dividend

becoming payable thereon, may be held subject to the further orders of the Court from which the notice is issued:

Provided that, where such property is in the custody of a Court any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

53- (1) Where the property to be attached is a decree, either for the payment of money or for sale in enforcement of a mortgage or charge, the attachment shall be made, -

a) if the decrees were passed by the same Court, then by order of such Court, and

b) if the decree sought to be attached was passed by another Court, then by the issue to such other Court of a notice by the Court which passed the decree sought to be executed requesting such other Court to stay the execution of its decree unless and until -

i. the Court which passed the decree sought to be executed cancels the notice, or

ii. the holder of the decree sought to be executed or his judgment-debtor applies to the Court receiving such notice to execute its own decree.

(2) Where a Court makes an order under clause (a) of sub-rule (1) or receives an application under sub-head (ii) of clause (b) of the said sub-rule, it shall, on the application of the creditor who has attached the decree or his judgment-debtor, proceed to execute the attached decree and apply the net proceeds in satisfaction of the decree sought to be executed.

(3) The holder of a decree sought to be executed by the attachment of another decree of the nature specified in sub-rule (1) shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

(4) Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in sub-rule (1), the attachment shall be made, by a notice by the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and where such decree has been passed by any other Court, also by sending to such other Court also by sending to such other Court a notice to abstain from executing

the decree sought to be attached until such notice is cancelled by the Court from which it was sent.

(5) The holder of a decree attached under this rule shall give the Court executing the decree such information and aid as may reasonably be required.

(6) On the application of the holder of a decree sought to be executed by the attachment of another decree, the Court making an order of attachment under this rule shall give notice of such order to the judgment-debtor bound by the decree attached; and no payment or adjustment of the attached decree made by the judgment-debtor in contravention of such order after receipt of notice thereof, either through the Court or otherwise, shall be recognized by any Court so long as the attachment remains in force.

54 – (1) Where the property is immovable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from making any benefit from such transfer or charge.

(2) The order shall be proclaimed at some place on or adjacent to such a property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the Court-house, and also, where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate.

55. Where-

a) the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into Court or,

b) satisfaction of the decree is otherwise made through the Court or certified to the Court or

c) the decree is set aside or reversed,

the attachment shall be deemed to be withdrawn, and, in the case of immovable property, the withdrawal shall, if the judgment-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by the last preceding rule.

56. Where the property attached is current coin or currency notes, the court may at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

57. Where any property has been attached in execution of a decree but by reason of the decree-holder's default the Court is unable to proceed further with the application for execution, it shall either dismiss the application or for any sufficient reason adjourn the proceedings to a future date. Upon the dismissal of such application the attachment shall cease.

#### Investigation of Claims and Objections

58.- (1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit:

[Provided that no such investigation shall be made where it appears to the Court that the claim or objection (whether made before or after the sale) has been designedly or unnecessarily delayed, or was not made within a reasonable time or within one year of the date of the first attachment of the said property in the execution of the said decree, whichever is earlier, unless the claimant or objector -

a) proves title acquired in good faith and for consideration subsequent to the date of the first attachment;

b) proves that his predecessors-in-interest, whether their interest existed at the time of such attachment or was acquired thereafter, fraudulently omitted to make a claim or objection; and

c) impleads all such predecessors-in-interest, as parties]

(2) Where the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection.

[59. The claimant or objector must adduce evidence to show that at the date of the attachment he had a title to, or right or interest in, the property attached.

60. Where upon the said investigation the Court is satisfied that the claimant or objector had a title to, or right or interest in, the said property and the said property was not, by reason of such title, right or interest, wholly or partly liable to attachment, the Court shall make an order releasing the property, wholly, or as the case may be, to such extent as it is not so liable, from attachment.

61. Where the Court is satisfied that the property is subject to mortgage or charge in favour of some person and thinks fit to continue the attachment, it may do so subject to such mortgage or charge.

62. All questions relating to the right title or interest of the claimant or objector in the attached property shall be adjudicated upon and determined by the Court and no separate suit shall lie to establish such title, right or interest.]

63. [Omitted]

#### Sale Generally

64. Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

65. Sale as otherwise prescribed, every sale in execution of a decree shall be conducted by an officer of the Court or by such other person as the Court may appoint in this behalf, and shall be made by public auction in manner prescribed.

66- (1) Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court.

(2) Such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible -

- a) the property to be sold;
- b) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government;
- c) any incumbrance to which the property is liable;
- d) the amount for the recovery of which the sale is ordered; and
- e) every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property.

(3) Every application for an order for sale under this rule shall be accompanied by a statement signed and verified in the manner hereinbefore prescribed for the signing and verification of pleadings and

containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by sub-rule (2) to be specified in the proclamation.

(4) For the purpose of ascertaining the matters to be specified in the proclamation, the Court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.

67 – (1) Every proclamation shall be made and published, as nearly as may be, in the manner prescribed by rule 54, sub-rule (2).

(2) Where the Court so directs, such proclamation shall also be published in the [official Gazette] or in a local newspaper, or in both, and the costs of such publication shall be deemed to be costs of the sale.

(3) Where property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot unless proper notice of the sale cannot, in the opinion of the Court, otherwise be given.

68. Save in the case of property of the kind described in the proviso to rule 34, no sale hereunder shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immovable property, and of at least fifteen days in the case of movable property, calculated from the date on which the copy of the proclamation has been affixed on the Court-house of the Judge ordering the sale.

69 – (1) The Court may, in its discretion, adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment:

Provided that, where the sale is made in, or within the precincts of, the Court-house, no such adjournment shall be made without the leave of the Court.

(2) Where a sale is adjourned under sub-rule(1) for a longer period than seven days a fresh proclamation under rule 67 shall be made, unless the judgment-debtor consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction

that the amount of such debt and costs has been paid into the Court which ordered the same.

70. Nothing in rules 66 to 69 shall be deemed to apply to any case in which the execution of a decree has been transferred to the Collector.

71. Any deficiency of price which may happen on a re-sale by reason of the purchaser's default and all expenses attending such re-sale, shall be certified to the Court or to the Collector or subordinate of the Collector, as the case may be, by the officer or other person holding the sale, and shall at the instance of either the decree-holder or the judgment-debtor, be recoverable from the defaulting purchaser under the provisions relating to the execution of a decree for the payment of money.

72.- (1) No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.

(2) Where a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, subject to the provisions of section 73, be set-off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

(3) Where a decree-holder purchases, by himself or through another person, without such permission the Court may, if it thinks fit, on the application of the judgment-debtor or any other person whose interests are affected by the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale and all expenses attending it, shall be paid by the decree-holder.

73. No officer or other person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

### **Sale of Movable Property**

74.- (1) Where the property to be sold is agricultural produce the sale shall be held, -

a) if such produce is a growing crop, on or near the land on which such crop has grown, or

b) if such produce has been cut or gathered, at or near the threshing-floor or place for treading out grain or the like or fodder-stack on or in which it is deposited:

Provided that the Court may direct the sale to be held at the nearest place of public resort, if it is of opinion that the produce is thereby likely to sell to greater advantage.

(2) Where on the produce being put up for sale, -

a) a fair price, in the estimation of the person holding the sale, is not offered for it, and

b) the owner of the produce or a person authorized to act in his behalf applies to have the sale postponed till the next day or, if a market is held at the place of sale, the next market-day,

the sale shall be postponed accordingly and shall be then completed, whatever price maybe offered for the produce.

75.- (1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of its being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored, it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending and cutting and or gathering it.

76. Where the property to be sold is a negotiable instrument or a share in a corporation, the Court may, instead of directing the sale to be made by public auction, authorise the sale of such instrument or share through a broker.

77- (1) Where movable property is sold by public auction the price of each lot shall be paid at the time of sale or as soon after as the officer or other person holding the sale directs, and in default of payment the property shall forthwith be re-sold.

(2) On payment of the purchase-money the officer or other person holding the sale shall grant a receipt for the same, and the sale shall become absolute.

(3) Where the movable property to be sold is a share in goods belonging to the judgment-debtor and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

78. No irregularity in publishing or conducting the sale of movable property shall vitiate the sale; but any person sustaining

any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

79.-(1) Where the property sold is movable property of which actual seizure has been made, it shall be delivered to the purchaser.

(2) Where the property sold is movable property in the possession of some person other than the judgment-debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

(3) Where the property sold is a debt not secured by a negotiable instrument, or is a share in a corporation, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the corporation from permitting any such transfer or making any such payment to any person except the purchaser.

80.-(1) Where the execution of a document or the endorsement of the party in whose name a negotiable instrument or a share in a corporation is standing is required to transfer such negotiable instrument or share, the Judge or such officer as he may appoint in this behalf may execute such document or make such endorsement as may be necessary, and such execution or endorsement shall have the same effect as an execution or endorsement by the party.

(2) Such execution or endorsement may be in the following form namely:-

AB by CD Judge of the Court of (or as the case may be) in a suit by EF against AB.

(3) Until the transfer of such negotiable instrument or share, the Court may by order appoint some person to receive any interest or divided due thereon and to sign a receipt for the same; and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself.

81. In case of any movable property not hereinbefore provided for, the Court may make an order vesting such property in the purchaser or as he may direct; and such property shall vest accordingly.

## **Sale of Immovable Property**

82. Sales of immovable property in execution of decrees may be ordered by any Court other than a Court of Small Causes.

83.- (1) Where an order for the sale of immovable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the judgement-debtor the Court may on his application postpone the sale of the property comprised in the order for sale on such terms and for such period as it thinks proper, to enable him to raise the amount.

(2) In such case the Court shall grant a certificate to the judgment-debtor authorizing him within a period to be mentioned therein, and notwithstanding anything contained in section 64 to make the proposed mortgage lease or sale:

Provided that all monies payable under such mortgage, lease or sale shall be paid not to the judgment-debtor, but save in so far as a decree-holder is entitled to set-off such money under the provisions of rule 72 into Court:

Provided also that no mortgage leases or sale under this rule shall become absolute until it has been confirmed by the Court.

(3) Nothing in this rule shall be deemed to apply to a sale of property directed to be sold in execution of a decree for sale in enforcement of a mortgage of or charge on such property.

84.- (1) On every sale of immovable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per cent. On the amount of his purchase money to the officer or other person conducting the sale and in default of such deposit the property shall forthwith be resold.

(2) Where the decree holder is the purchaser and is entitled to set off the purchase-money under rule 12, the Court may dispense with the requirements of this rule.

85. The full amount of purchase-money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property:

Provided that in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72.

86. In default of payment within the period mentioned in the last preceding rule the deposit may if the court thinks fit after defraying the expenses of the sale, be forfeited to the Government and the property shall be re-sold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

87. Every re-sale of immovable property in default of payment of the purchase-money within the period allowed for such payment shall be made after the issue of a fresh proclamation in the manner and for the period hereinbefore prescribed for the sale.

88. Where the property sold is a share of undivided immovable property and two or more persons of whom one is a co-sharer, respectively bid the same sum for such property or for any lot the bid shall be deemed to be the bid of the co-sharer.

89. – (1) Where immovable property has been sold in execution of a decree, any person either owning such property or holding an interest therein by virtue of a title acquired before such sale may apply to have the sale set aside on his depositing in Court, -

a) for payment to the purchaser a sum equal to five per cent of the purchase money; and

b) for payment to the decree holder the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered less any amount which may since the date of such proclamation of sale have been received by the decree holder.

(2) Where a person applied under rule 90 to set aside the sale of his immovable property he shall not unless he withdraws his application be entitled to make or prosecute an application under this rule.

(3) Nothing in this rule shall relieve the judgement-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.

90. Where any immovable property has been sold in execution of a decree the decree-holder or any person entitled to share in a rateable distribution of assets or whose interests are affected by the sale may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it:

Provided that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud [and]

[Provided also that no such application shall be entertained unless the applicant deposits such amount not exceeding twenty per cent of the sum realized at the sale or furnishes such security as the Court may direct]

[Provided further that no such application shall be entertained unless the applicant deposits such amount not exceeding twenty per cent of the sum realized at the sale or furnishes such security as the Court may direct.]

91. 91. The purchaser at any such sale in execution of a decree may apply to the Court to set aside the sale on the ground that the judgment-debtor had no saleable interest in the property sold.

92.- (1) Where no application is made under rule 89, rule 90 or rule 91, or where such application is made and disallowed the Court shall make an order confirming the sale and thereupon the sale shall become absolute.

(2) Where such application is made and allowed and where in the case of an application under rule 89 the deposit required by that rule is made within thirty days from the date of sale the Court shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

(3) No suit to set aside an order made under this rule shall be brought by any person against whom such order is made.

93. Where a sale of immovable property is set aside under rule 92 the purchaser shall be entitled to an order for repayment of his purchase money with or without interest as the Court may direct against any person to whom it has been paid.

94. Where a sale of immovable property has become absolute the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear date the day on which the sale became absolute.

95. Where the immovable property sold is in the occupancy of the judgment-debtor or of some person on his behalf or of some person claiming under a title created by the judgment debtor subsequently to the attachment of such property and a certificate in respect thereof has been granted under rule 94 the Court shall on the application of the purchaser order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property and if need be by removing any person who refuses to vacate the same.

96. Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place that the interest of judgment debtor has been transferred to the purchaser.

### **Resistance to Delivery of Possession to Decree-holder**

#### **Or Purchaser**

97.- (1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property he may make an application to the Court complaining of such resistance or obstruction.

(2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

98. Where the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation it shall direct that the applicant be put into possession of the property and where the applicant is still resisted or obstructed in obtaining possession the Court may also at the instance of the applicant order the judgment-debtor or any person acting at his instigation to be detained in [.....] prison for a term which may extend to thirty days.

99. Where the Court is satisfied that the resistance or obstruction was occasioned by any person (other than the judgment-debtor) claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor the Court shall make an order dismissing the application.

100.- (1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or where such property has been sold in execution of a decree by the purchaser thereof he may make an application to the Court complaining of such dispossession.

(2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

101. Where the Court is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the judgement-debtor it shall direct that the applicant be put into possession of the property.

102. Nothing in rules 99 and 101 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

[103. - All questions arising as to title, right or interest in or possession of immovable property between an applicant under rule 97 and the opposite-party or between an applicant under rule 100 and the opposite party shall be adjudicated upon and determined by the Court and no separate suit shall lie for the determination of any such matter.]

## ORDER XXII

### DEATH, MARRIAGE AND INSOLVENCY OF PARTIES

1. The death of plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

2. Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiffs or plaintiffs alone or against the surviving defendant or defendants alone the Court shall cause an entry to that effect to be made on the record and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs or against the surviving defendant or defendants.

3. – (1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiffs alone; [or on receipt of an intimation of the death of such plaintiff from the person nominated by him for that purpose under rule 26, Order VII or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives the Court on an application made in that behalf shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

[(2) Where within the time allowed by law no application is made or intimation is given under sub-rule (1), the Court may proceed with the suit and any order made or judgment pronounced in such suit shall notwithstanding the death of such plaintiff have the same force and effect as if it had been made or pronounced before the death took place.]

4.- (1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone [or on receipt of an intimation of the death of such defendant from

the person nominated by him for that purpose under rule 13, Order VIII] or a sole defendant or sole surviving defendant dies and the right to sue survives the Court on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

[(3) When within the time limited by law no application is made or intimation is given under sub-rule (1) the Court may proceed with the suit and any order made or judgment pronounced in such suit shall notwithstanding the death of such defendant have the same force and effect as if it had been pronounced before the death took place.]

[(4) It shall not be necessary to substitute the legal representatives of any such defendant who has failed to file a written statement or has failed to appear and contest the suit at the hearing; and judgment may in such case be pronounced against the said defendant notwithstanding his death and such judgment shall have the same force and effect as if had been pronounced before his death took place.]

5. Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant such question shall be determined by the Court.

6. Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding death and shall have the same force and effect as if it had been pronounced before the death took place.

7. – (1) The marriage of a female plaintiff or defendant shall not cause the suit to abate but the suit may notwithstanding be proceeded with to judgment and where the decree is against a female defendant it may be executed against her alone.

(2) Where the husband is by law liable for the debts of his wife the decree may with the permission of the Court be executed against the husband also; and in case of judgment for the wife execution of the decree may with such permission, be issued upon the application of the husband where the husband is by law entitled to the subject-matter of the decree.

8. – (1) The insolvency of a plaintiff in any suit which the assignee or receiver might maintain for the benefit of his creditors, shall not cause the suit to abate unless such assignee or receiver declines to continue the suit or (unless for any special reason the Court otherwise

directs) to give security for the costs thereof within such time as the Court may direct.

(2) Where the assignee or receiver neglects or refuses to continue the suit and to give such security within the time so ordered the defendant may apply for the dismissal of the suit on the ground of the plaintiff's insolvency and the Court may make an order dismissing the suit and awarding to the defendant the costs which he has incurred in defending the same to be proved as a debt against the plaintiff's estate.

9. – (1) When a suit is dismissed under rule 8 no fresh suit shall be brought on the same cause of action.

(2) Any person claiming to be the legal representative of a deceased plaintiff or defendant or the assignee or the receiver in the case of an insolvent [plaintiff may apply to the Court for setting aside any order made or judgment pronounced by it in his absence; and if it is proved that he was prevented by any sufficient cause from continuing the suit or defending the suit as the case may be the Court shall set aside the order or the judgment upon such terms as to costs or otherwise as it thinks fit.]

[(3) The provisions of section 5 of the Limitation Act, 1908 (IX of 1908) shall apply to applications under sub-rule (2).]

10. – (1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit the suit may, by leave of the Court be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).

11. In the application of this Order to appeals so far as may be the word "Plaintiff" shall be held to include an appellant the word "defendant" a respondent and the word "suit" an appeal.

12. Nothing in rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order.

## **ORDER XXIII**

### **WITHDRAWAL AND ADJUSTMENT OF SUITS**

1. -(1) At any time after the institution of a suit the plaintiff may as against all or any of the defendants withdraw his suit or abandon part of his claim.

(2) Where the Court is satisfied -

a) that a suit must fail by reason of some formal defect  
or

b) that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or abandon such part of a claim with liberty to institute a fresh suit in respect of the subject matter of such suit or such part of a claim.

(3) Where the plaintiff withdraws from a suit or abandons part of a claim without the permission referred to in sub-rule (2), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(4) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to withdraw without the consent of the others.

2. In any fresh suit instituted on permission granted under the last preceding rule the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.

3. Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit the Court shall order such agreement compromise or satisfaction to be recorded and shall pass a decree in accordance therewith so far as it relates to the suit.

4. Nothing in this Order shall apply to any proceedings in execution of a decree or order.

## **ORDER XXIV**

### **PAYMENT INTO COURT**

1. The defendant in any suit to recover a debt or damages may at any stage of the suit deposit in Court such sum of money as he considers a satisfaction in full of the claim.

2. Notice of the deposit shall be given through the Court by the defendant to the plaintiff and the amount of the deposit shall (unless the Court otherwise directs) be paid to the plaintiff on his application.

3. No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice whether the sum deposited is in full of the claim or falls short thereof.

4. – (1) Where the plaintiff accepts such amount as satisfaction in part only of his claim, he may prosecute his suit for the balance; and if the court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim the plaintiff shall pay the costs of the suit incurred after the deposit and the costs incurred previous thereto so far as they were caused by excess in the plaintiff's claim.

(2) |Where the plaintiff accepts such amount as satisfaction in full of his claim he shall present to the Court a statement to that effect and such statement shall be filed and the Court shall pronounce judgment accordingly and in directing by whom the costs of each party are to be paid the Court shall consider which of the parties is most to blame for the litigation.

#### Illustrations

a) A owes B Rs.100 . B sues A for the amount, having made no demand for payment and having no reason to believe that the delay caused by making a demand would place him at a disadvantage. On the plaint being filed, A pays the money into Court. B accepts it in full satisfaction of his claim, but the Court should not allow him any costs, the litigation being presumably groundless on his part.

b) B sues A under the circumstances mentioned in Illustration (a). On the plaint being filed A disputes the claim. Afterwards A pays the money into Court. B accepts it in full satisfaction of his claim. The Court should also give B his costs of suit, A's conduct having shown that the litigation was necessary.

c) A owes B Rs 100, and is willing to pay him that sum without suit. B claims Rs.150 and sues A for that amount. On the plain being filed A pays Rs.100 into Court and disputes only his liability to pay the remaining Rs.50. B accepts the Rs.100 in full satisfaction of his claim. The Court should order him to pay A's costs.

#### **ORDER XXV**

#### **SECURITY FOR COSTS**

1.- (1) Where at any stage of a suit it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are residing out of [Pakistan] and that such plaintiff does not or that no one of such plaintiffs does possess any sufficient immovable property within [Pakistan] other than the property in suit the Court may, either of its own motion or on the application of any defendant, order

the plaintiff or plaintiffs, within a time fixed by it, to give security for the payment of all costs incurred and likely to be incurred by any defendant.

(2) Whoever leaves [Pakistan] under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of [Pakistan] within the meaning of sub-rule (1).

(3) On the application of any defendant in a suit for the payment of money, in which the plaintiff is a woman, the Court may at any stage of the suit make a like order if it is satisfied that such plaintiff does not possess any sufficient immovable property within [Pakistan].

2.- (1) In the event of such security not being furnished within the time fixed, the Court shall make an order dismissing the suit unless the plaintiff or plaintiffs are permitted to withdraw therefrom.

(2) Where a suit is dismissed under this rule, the plaintiff may apply for an order to set the dismissal aside, and, if it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the Court shall set aside the dismissal upon such terms as to security, costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(3) The dismissal shall not be set aside unless notice of such application has been served on the defendant.

## **ORDER XXVI**

### **COMMISSIONS**

#### Commissions to Examine Witnesses

1. Any court may in any suit issue a commission for the examination on interrogatories or otherwise of any person resident within the local limits of its jurisdiction who is exempted under this Code from attending the Court or who is from sickness or infirmity unable to attend it.

2. An order for the issue of a commission for the examination of a witness may be made by the Court either of its own motion or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined.

3. A commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit to execute it.

4.-(1) Any Court may in any suit issue a commission for the examination of -

a) any person resident beyond the local limits of its jurisdiction;

b) any person who is about to leave such limits before the date on which he is required to be examined in Court; and

c) [any person in the service of the [State] ] who cannot, in the opinion of the Court, attend without detriment to the public service.

(2) Such commission may be issued to any Court, not being a High Court, within the local limits of whose jurisdiction such person resides, or to any pleader or other person whom the Court issuing the commission may appoint.

(3) The Court on issuing any commission under this rule shall direct whether the commission shall be returned to itself or to any subordinate Court.

5. Where any Court to which application is made for the issue of commission for the examination of a person residing at any place not within[Pakistan] is satisfied that the evidence of such person is necessary, the Court may issue such commission or a letter of request.

6. Every Court receiving a commission for the examination of any person shall examine him or cause him to be examined pursuant thereto.

7. Where a commission has been duly executed it shall be returned, together with the evidence taken under it, to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the return thereto and the evidence taken under it shall (subject to the provisions of the next following rule) form part of the record of the suit.

8. Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered unless-

a) the person who gave the evidence is beyond the jurisdiction of the Court, or dead or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court, or is a [person in the service of the [State]] who cannot, in the opinion of the Court attend without detriment to the public service, or

b) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in clause (a) and authorizes the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

#### Commissions for Local Investigations

9. In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount or any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:

Provided that, where the [Provincial Government] has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

10.-(1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him to the Court.

(2) The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

(3) Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.

#### Commission to examine Accounts

11. In any suit in which an examination or adjustment of accounts is necessary, the Court may issue a commission to such person as it thinks fit directing him to make such examination or adjustment.

12.-(1) The Court shall furnish the Commissioner with such part of the proceedings and such instructions as appear necessary and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.

(2) The proceedings and report (if any) of the Commissioner shall be evidence in the suit, but where the Court has reason to be dissatisfied with them, it may direct such further inquiry as it shall think fit.

#### Commissions to make Partitions

13. Where a preliminary decree for partition has been passed, the Court may, in any case not provided for by section 54, issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree.

14.- (1) The Commissioner shall, after such inquiry as may be necessary, divide the property into as many shares as may be directed by the order under which the commission was issued, and shall allot such shares to the parties, and may, if authorised thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

(2) The Commissioner shall then prepare and sign a report or the Commissioners (where the commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall confirm, vary or set aside the same.

(3) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied; but where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit.

#### General Provisions

15. Before issuing any commission under this Order, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission to be, within a time to be fixed paid into Court by the party at whose instance or for whose benefit the commission is issued.

16. Any commissioner appointed under this Order may, unless otherwise directed by the order of appointment,-

a) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him;

b) call for and examine documents and other things relevant to the subject of inquiry;

c) at any reasonable time enter upon or into any land or building mentioned in the order.

17.- (1) The provisions of this Code relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this Order whether the commission in execution of which they are so required has been issued by a Court situate within or by a Court situate beyond the limits of [Pakistan] and for the purpose of this rule the Commissioner shall be deemed to be a civil Court.

(2) A Commissioner may apply to any Court (not being a High Court) within the local limits of whose jurisdiction a witness resides for the issue of any process which he may find it necessary to issue to or against such witness, and such Court may, in its discretion, issue such process a sit considers reasonable and proper.

18.- (1) Where a commission is issued under this Order, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders.

(2) Where all or any of the parties do not so appear, the Commissioner may proceed in their absence.

[Commissions issued at the instance of Foreign Tribunals.

19.- (1) If a High Court is satisfied -

a) that a foreign Court situated in a foreign country wishes to obtain the evidence of a witness in any proceeding before it,

b) that the proceeding is of a civil nature, and

c) that the witness is residing within the limits of the High Court's appellate jurisdiction.

It may, subject to the provisions of rule 20, issue a commission for the examination of such witness.

(2) Evidence may be given of the matters specified in clauses (a), (b) and (c) of sub-rule (1)-

a) by a certificate signed by the consular officer of the foreign country of the highest rank in [Pakistan] and transmitted to the High Court through the [Central Government], or

b) by a letter of request issued by the foreign Court and transmitted to the High Court through the [Central Government] or

c) by a letter of request issued by the foreign Court and produced before the High Court by a party to the proceeding.

20. The High Court may issue a commission under rule 19 -

a) upon application by a party to the proceeding before the foreign Court or

b) upon an application by a law officer of the [Provincial Government] acting under instructions from the [Provincial Government].

21. A commission under rule 19 may be issued to any Court within the local limits of whose jurisdiction the witness resides, or, where \*\*\* the witness resides within the local limits of [the ordinary original civil jurisdiction of the High Court], to any person whom the Court thinks fit to execute the commission.

21. The provisions of rules 6, 15, 16, 17 and 18 of this Order in so far as they are applicable shall apply to the issue, execution and return of such commissions, and when any such commission has been duly executed it shall be returned, together with the evidence taken under it, to the High Court, which shall forward it to the [Central Government] along with the letter or request for transmission to the foreign Court].

## **ORDER XXVII**

### **SUITS BY OR AGAINST [THE [GOVERNMENT]] OR PUBLIC OFFICERS**

#### **IN THEIR OFFICIAL CAPACITY**

1. In any suit by or against [the [Government]], the plaint or written statement shall be signed by such person as [the [Government]] may, by general or special order, appoint in this behalf, and shall be verified by any person whom [the [Government]] may so appoint and who is acquainted with the facts of the case.

2. Persons being ex officio or other wise authorised to act for [the [Government]] in respect of any judicial proceeding shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code maybe made or done on behalf of [the[Government]].

3. In suits by or [against the [Government]] instead of inserting in the plaint the name and description and place of residence of the plaintiff or defendant, it shall be sufficient to insert [the appropriate name as provided in section 79, \*\*\*].

[4. The Government] pleader in any Court shall be the agent of the [Government] for the purpose of receiving processes against the [Government] issued by such [Court.]

5. The Court, in fixing the day for [the [Government]] to answer to the plaint, shall allow a reasonable time for the necessary communication [with the [Government]] through the proper channel, and for the issue of instructions to the [[Government] pleader] to appear and answer on behalf of [the [Government]] \*\*\* and may extend the time at its discretion.

6. The Court may also, in any case in which the [ [Government] pleader] is not accompanied by any person on the part of [the [Government]] who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

7.- (1) Where the defendant is a public officer and, on receiving the summons, considers it proper to make a reference to [the [Government]] before answering the plaint, he may apply to the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel.

(2) Upon such application the court shall extend the time for so long as appears to it to be necessary.

8.- (1) Where [the [government]] undertakes the defence of a suit against a public officer [the Government] pleader], upon being furnished with authority to appear and answer the plaint, shall apply to the Court, and upon such application the Court shall cause a note of his authority to be entered in the register of civil suits.

(2) Where no application under sub-rule (1) is made by [the [Government] pleader] on or before the day fixed in the notice for the defendant to appear and answer, the case shall proceed as in a suit between private parties:

Provided that the defendant shall not be liable to arrest, nor his property to attachment otherwise than in execution of a decree.

8.A. No such security as is mentioned in rules 5 and 6 of Order XLI shall be required from the [Government] or where the [Government] has undertaken the defence of the suit, from any public officer sued in respect of an act alleged to be done by him in his official capacity.

8B. In this Order "[Government]" and "[Government] pleader" means respectively-

a) in relation to any suit by or against \*\*\* the Central Government, or against a public officer in the service of that Government,

the Central Government and such pleader as that Government may appoint whether generally or specially for the purposes of this Order:

b) \* \* \* \* \*

c) in relation to any suit by or against a Provincial Government or against a public officer in the service of a Province, the Provincial Government and the Government pleader, or such other pleader as the Provincial Government may appoint, whether generally or specially for the purposes of this Order.]

## **[ORDER XXVIIA**

### **SUITS INVOLVING ANY SUBSTANTIAL QUESTION AS TO THE INTERPRETATION OF CONSTITUTIONAL LAW**

1. In any suit in which it appears to the Court that [ any substantial question as to the interpretation of constitutional law] is involved, the Court shall not proceed to determine the question until after notice has been given to the [Attorney-General for Pakistan] if the question of law concerns the Central Government and to the Advocate-General of the Province if the question of law concerns a Provincial Government.

2. The Court may at any stage of the proceedings order that the Central Government or a provincial Government shall be added as a defendant in any suit involving [any substantial question as to the interpretation of constitutional law] if the [Attorney-General for Pakistan] or the Advocate-General of the Province as the case may be, whether upon receipt of notice under rule 1, or otherwise applies for such addition and the Court is satisfied that such addition is necessary or desirable for the satisfactory determination of the question of law involved.

3. Where under rule 2 Government is added as a defendant in a suit [the Attorney-General] the Advocate General or the Government shall not be entitled to or liable for costs in the Court which ordered the addition unless the Court having regard to all the circumstances of the case for any special reason otherwise orders .

4. In the application of this Order to appeals the word "defendant" shall be held to include a respondent and the word "suit" an appeal.

## **ORDER XXVIII**

### **SUITS BY OR AGAINST MILITARY [OR NAVAL]MEN [OR AIRMEN]**

1. – (1) Where any officer, [soldier, sailor or airman] actually [in the service of the State] in [such] capacity is a party to a suit, and cannot obtain leave

of absence for the purpose of prosecuting or defending the suit in person, he may authorise any person to sue or defend in his stead.

(2) The authority shall be in writing and shall be signed by the officer, [soldier, sailor or airman] in the presence of (a) his commanding officer, or his next subordinate officer, if the party is himself the commanding officer, or (b) where the officer, [soldier, sailor or airman] is serving in military [naval] [or air force] staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall counter sign the authority which shall be filed in Court.

(3) When so filed the countersignature shall be sufficient proof that the authority was duly executed, and that the officer, [soldier, sailor or airman] by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

Explanation – In this Order the expression “commanding officer” means the officer in actual command for the time being of any regiment, corps, [ship] detachment or depot to which the officer, [soldier, sailor or airman] belongs.

2. Any person authorised by an officer, [soldier, sailor or airman] to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as the officer, [soldier, sailor or airman] could do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such officer, [soldier, sailor or airman].

3. Processes served upon any person authorised by an officer, [soldier, sailor or airman] under rule 1 or upon any pleader appointed as aforesaid by such person shall be as effectual as if they had been served on the party in person.

## **ORDER XXIX**

### **SUITS BY OR AGAINST CORPORATIONS**

1. In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

2. Subject to any statutory provision regulating service of process, where the suit is against a corporation the summons may be served

-

a) on the secretary, or on any director, or other principal officer of the corporation, or

b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business.

3. The Court may, at any stage of the suit, require the personal appearance of the secretary or of any director, or other principal officer of the corporation who may be able to answer material questions relating to the suit.

## **ORDER XXX**

### **SUITS BY OR AGAINST FIRMS AND PERSONS CARRYING ON**

#### **BUSINESS IN NAMES OTHER THAN THEIR OWN**

1.- (1) Any two or more persons claiming or being liable as partners and carrying on business in [Pakistan] may sue or be sued in the name of firm (if any) of which such persons were partners at the time of the accruing of the cause of action and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were at the time of the accruing of the cause of action partners in such firm, to be furnished and verified in such manner as the Court may direct.

(2) Where persons sue or are sued as partners in the name of their firm under sub-rule (1) it shall in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant suffice if such pleading or other document is signed, verified or certified by any one of such persons.

2.- (1) Where a suit is instituted by partners in the name of their firm, the plaintiffs or their pleader shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting a firm on whose behalf the suit is instituted.

(2) Where the plaintiffs or their pleader fail to comply with any demand made under sub-rule (1) all proceedings in the suit may upon an application for that purpose, be stayed upon such terms as the Court may direct.

(3) Where the names of the partners are declared in the manner referred to in sub-rule (1), the suit shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as plaintiffs in the plaint:

Provided that all the proceedings shall nevertheless continue in the name of the firm.

3. Where persons are sued as partners in the name of their firm, the summons shall be served either -

a) upon any one or more of the partners, or

b) at the principal place at which the partnership business is carried on within [Pakistan] upon any person having, at the time of service, the control or management of the partnership business there,

as the Court may direct; and such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without [Pakistan]:

Provided that, in the case of a partnership which has been dissolved to the knowledge of the plaintiff before the institution of the suit, the summons shall be served upon every person within [Pakistan] whom it is sought to make liable.

4. – (1) Notwithstanding anything contained in section 45 of the Contract Act, 1872, where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit.

(2) Nothing in sub-rule (1) shall limit or otherwise affect any right which the legal representative of the deceased may have -

a) to apply to be made a party to the suit, or

b) to enforce any claim against the survivor or survivors.

5. Where a summons is issued to a firm and is served in the manner provided by rule 3, every person upon whom it is served shall be informed by notice in writing given at the time of such service, whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters, and in default of such notice, the person served shall be deemed to be served as a partner.

6. Where persons are sued as partners in the name of their firm, they shall appear individually in their own names, but all subsequent proceedings shall, nevertheless continue in the names of the firm.

7. Where a summons is served in the manner provided by rule 3 upon a person having the control or management of the partnership business no appearance by him shall be necessary unless he is a partner of the firm sued.

8. Any person served with summons as a partner under rule 3 may appear under protest, denying that he is a partner, but such appearance shall not preclude the plaintiff from otherwise serving a summons on the firm and obtaining a decree against the firm in default of appearance where no partner has appeared.

9. This Order shall apply to suits between a firm and one or more of the partners therein and to suits between firms having one or more partners in common; but no execution shall be issued in such suits except by leave of the Court and on an application for leave to issue such execution, all such accounts and inquiries may be directed to be taken and made and directions given as may be just.

10. Any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name; and so far as the nature of the case will permit, all rules under this Order shall apply.

#### **ORDER XXXI**

#### **SUITS BY OR AGAINST TRUSTEES, EXECUTORS AND**

#### **ADMINISTRATORS**

1. In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the person so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made parties.

2. Where there are several trustees, executors or administrators they shall all be made parties to a suit against one or more of them:

Provided that the executors who have not proved their testator's will, and trustees executors and administrators outside [Pakistan] need not be made parties.

3. Unless the Court directs otherwise the husband of a married trustee, administratrix or executrix shall not as such be a party to a suit by or against her.

#### **ORDER XXXII**

#### **SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND**

1. Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor.

2. – (1) Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to us paid by the pleader or other person by whom it was presented.

(2) Notice of such application shall be given to such person and the Court after hearing his objections (if any) may make such order in the matter as it thinks fit.

3.- (1) Where the defendant is a minor, the Court on being satisfied of the fact of his minority shall appoint a proper person to be guardian for the suit for such minor.

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

(4) No order shall be made on any application under this rule except upon notice to minor and to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian upon notice to the father or other natural guardian of the minor, or, where there is no father or other natural guardian, to the person in whose case the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under the sub-rule.

[(5) A person appointed under sub-rule (1) to be guardian for the suit for a minor shall, unless his appointment is terminated by retirement, removal or death, continue as such throughout all proceedings arising out of the suit including proceedings in any appellate or revisional Court and any proceedings in the execution of a decree.]

4. – (1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit:

Provided that the interest of such person is not adverse to that of the minor and that of the minor and that he is not, in the case of a next friend, a defendant or, in the case of a guardian for the suit, a plaintiff.

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or be appointed his guardian for the suit unless the Court considers for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be.

(3) No person shall without his consent be appointed guardian for the suit.

(4) Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested, and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require.

5. – (1) Every application to the Court on behalf of a minor, other than an application under rule 10, sub-rule (2) shall be made by his next friend or by his guardian for the suit.

(2) Every order made in a suit or on any application before the Court in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged and, where the pleader of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, with costs to be paid by such pleader.

6.-(1) A next friend or guardian for the suit shall not, without the leave of the Court receive any money or other movable property on behalf of a minor either-

a) by way of compromise before decree or order or

b) under a decree or order in favour of the minor.

(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other movable property the Court shall if it grants him leave to receive the property require such security and give such directions as will in its opinion, sufficiently protect the property from waste and ensure its proper application.

7.-(1) No next friend or guardian for the suit shall without the leave of the Court expressly recorded in the proceedings enter

into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.

(2) Any such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against all parties other than the minor.

8.-(1) Unless otherwise ordered by the Court a next friend shall not retire without first procuring a fit person to be put in his place and giving security for the costs already incurred.

(2) The application for the appointment of a new next friend shall be supported by an affidavit showing the fitness of the person proposed and also that he has no interest adverse to that of the minor.

9. – (1) Where the interest of the next friend of a minor is adverse to that of the minor or where he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him, or where he does not do his duty, or, during the pendency of the suit, ceases to reside within [ Pakistan] or for any other sufficient cause application may be made on behalf of the minor or by a defendant for his removal; and the Court, if satisfied of the sufficiency of the cause assigned may order the next friend to be removed accordingly and make such other order as to costs as it thinks fit.

(2) Where the next friend is not a guardian appointed or declared by an authority competent in this behalf and an application is made by a guardian so appointed or declared, who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers for reasons to be recorded by it that the guardian ought not to be appointed the next friend of the minor and shall thereupon appoint the applicant to be next friend in his place upon such terms as to the costs already incurred in the suit as it thinks fit.

10. – (1) On the retirement removal or death of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place.

(2) Where the pleader of such minor omits within a reasonable time to take steps to get a new next friend appointed, any person interested in the minor or in the matter in issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.

11. – (1) Where the guardian for the suit desires to retire or does not do his duty, or where other sufficient ground is made to appear, the Court may permit such guardian to retire or may remove him, and may make such order as to costs as it thinks fit.

(2) Where the guardian for the suit retires, dies or is removed by the Court during the pendency of the suit the Court shall appoint a new guardian in his place.

12. – (1) A minor plaintiff or a minor not a party to a suit on whose behalf an application is pending shall, on attaining majority, elect whether he will proceed with the suit or application.

(2) Where he elects to proceed with the suit or application he shall apply for an order discharging the next friend and for leave to proceed in his own name.

(3) The title of the suit or application shall in such case be corrected so as to read henceforth:-

“A. B., late a minor, by C.D., his next friend, but now having attained majority.”

(4) Where he elects to abandon the suit or application, he shall if a sole plaintiff or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or opposite-party or which may have been paid by his next friend.

(5) Any application under this rule may be made ex parte: but no order discharging a next friend and permitting a minor plaintiff to proceed in his own name shall be made without any notice to the next friend.

13. – (1) Where a minor co-plaintiff on attaining majority desires to repudiate the suit, he shall apply to have his name struck out as co-plaintiff; and the Court, if it finds that he is not a necessary party shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit.

(2) Notice of the application shall be served on the next friend on any co-plaintiff and on the defendant.

(3) The costs of all parties of such application and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs.

(4) Where the applicant is a necessary party to the suit, the Court may direct him to be made a defendant.

14. – (1) A minor on attaining majority may, if a sole plaintiff, apply that a suit instituted in his name by his next friend be dismissed on the ground that it was unreasonable or improper.

(2) Notice of the application shall be served on all the parties concerned; and the Court upon being satisfied of such unreasonableness or impropriety, may grant the application and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit, or make such other order as it thinks fit.

15. The provisions contained in rules 1 to 14 so far as they are applicable, shall extend to persons adjudged to be of unsound mind and to persons who though not so adjudged are found by the Court in inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued.

16. Nothing in this Order shall be construed to affect or in any way derogate from the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind.

## **ORDER XXXIII**

### **SUITS BY PAUPERS**

1. Subject to the following provisions, any suit may be instituted by a pauper.

Explanation:- A person is a "pauper" when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or where no such fee is prescribed when he is not entitled to property worth [one thousand) rupees other than his necessary wearing apparel and the subject matter of the suit.

2. Every application for permission to sue as a pauper shall contain the particulars required in regard to plaints in suits a schedule of any movable or immovable property belonging to the applicant with the estimated value thereof shall be annexed thereto; and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings.

3. Notwithstanding anything contained in these rules, the application shall be presented to the Court by the applicant in person unless he is exempted from appearing in Court, in which case the application may be presented by an authorised agent who can answer all material questions relating to the application and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.

4. - (1) Where the application is in proper form and duly presented the Court may if it thinks fit examine the applicant or his agent when the applicant is allowed to appear by agent regarding the merits of the claim and the property of the applicant.

(2) Where the application is presented by an agent, the Court may if it thinks fit order that the applicant be examined by a commission in the manner in which the examination of an absent witness may be taken.

5. The Court shall reject an application for permission to sue as a pauper -

a) where it is not framed and presented in the manner prescribed by rules 2 and 3, or

b) where the applicant is not a pauper, or

c) where he has, within two months next before the presentation of the application, disposed of any property fraudulently or in order to be able to apply for permission to sue as a pauper, or

d) where his allegations do not show a cause of action, or

e) where he has entered into any agreement with reference to the subject matter of the proposed suit under which any other person has obtained an interest in such subject matter.

6. Where the Court sees no reason to reject the application on any of the grounds stated in rule, 5, it shall fix a day (of which at last ten days clear notice shall be given to the opposite party and the Government pleader) for receiving such evidence as the applicant may adduce in proof of his pauperism, and for hearing any evidence which may be adduced in disproof thereof.

7. - (1) On the day so fixed or as soon thereafter as may be convenient, the Court shall examine the witnesses (if any) produced by either party and may examine the applicant or his agent and shall make a memorandum of the substance of their evidence.

(2) The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court as herein provided, the applicant is or is not subject to any of the prohibitions specified in rule 5.

(3) The Court shall then either allow or refuse to allow the applicant to sue as a pauper.

8. Where the application is granted it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted in the ordinary manner, except that plaintiff shall not be liable to pay any court-fee (other than fee payable for service of process) in respect of any petition, appointment of a pleader or other proceeding connected with the suit.

9. The Court may on the application of the defendant or of the Government pleader of which seven days clear notice in writing has been given to the plaintiff order the plaintiff to be dispaupered-

a) if he is guilty of vexatious or improper conduct in the course of the suit;

b) if it appears that his means are such that he ought not to continue to sue as a pauper; or

c) if he has entered into any agreement with reference to the subject-matter of the suit under which any other person has obtained an interest in such subject matter.

10. Where the plaintiff succeeds in the suit, the Court shall calculate the amount of court fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; such amount shall be recoverable by the [Provincial Government] from any party ordered by the decree to pay the same, and shall be a first charge on the subject matter of the suit.

11. Where the plaintiff fails in the suit or is dispaupered, or where the suit is withdrawn or dismissed, -

a) because the summons for the defendant to appear and answer has not been served upon him in consequence of the failure of the plaintiff to pay the court fee or postal charges (if any) chargeable for such service, or

b) because the plaintiff does not appear when the suit is called on for hearing.

The Court shall order the plaintiff, or any person added as a co-plaintiff to the suit, to pay the court fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper.

[11.-A. Where the suit abates by reason of the death of the plaintiff or of any person added as a co-plaintiff the Court shall order that the amount of court fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper shall be recoverable by the Provincial Government from the estate of the deceased plaintiff.]

12. The [Provincial Government shall have the right at any time to apply to the Court to make an order for the payment of court fees under rule 10 [rule 11 or rule 11-A].

13. All matters arising between the [Provincial Government] and any party to the suit under rule 10, rule 11 [rule 11A] or rule 12 shall

be deemed to be questions arising between the parties to the suit within the meaning of section 47.

[14. Where an order is made under rule 10, rule 11 or rule 11A the court shall forthwith cause a copy of the decree or order to be forwarded to the Collector, who may without prejudice to any other mode of recovery recover the amount of court fees specified therein from the person or property liable for the payment as if it were an arrear of land revenue.]

15. An order refusing to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, provided that he first pays the costs, (if any) incurred by the [Provincial Government] and by the opposite party in opposing his application for leave to sue as a pauper.

16. The costs of an application for permission to sue as a pauper and of an inquiry into pauperism shall be costs in the suit.

#### **ORDER XXXIV**

#### **SUITS RELATING TO MORTGAGES OF IMMOVABLE PROPERTY**

1. Subject to the provisions of this Code, all persons having an interest either in the mortgage-security or in the right of redemption shall be joined as parties to any suit relating to the mortgage.

Explanation: – A puisne mortgagee may sue for foreclosure or for sale without making the prior mortgagee a party to the suit; and a prior mortgagee need not be joined in a suit to redeem a subsequent mortgage.

[2. In a suit for foreclosure, if the plaintiff succeeds, the Court shall pass a preliminary decree -

a) Ordering that an account be taken of what was due to the plaintiff at the date of such decree for -

i. principal and interest on the mortgage,

ii. the costs of suit, if any, awarded to him and

iii. other costs, charges and expenses properly incurred by him up to that date in respect of his mortgage-security together with interest thereon; or

b) declaring the amount so due at that date; and

c) directing -

i. that, if the defendant pays into Court the amount so found or declared due on or before such date as the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under clause (a) or from the date on which such amount is declared in Court under clause (b) as the case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses as provided in rule 10, together with subsequent interest on such sums respectively as provided in rule 11 the plaintiff shall deliver up to the defendant or to such person as the defendant appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, retransfer the property to the defendant at his cost free from the mortgage and from all encumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title by those under whom he claims, and shall also if necessary put the defendant in possession of the property; and

ii. that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed, or the defendant fails to pay within such time as the Court may fix, the amount adjudged due in respect of subsequent costs, charges, expenses and interest the plaintiff shall be entitled to apply for a final decree debarring the defendant from all right to redeem the property.

(2) The Court may on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before a final decree is passed, extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges expenses and interest.

(3) Where in a suit for foreclosure, subsequent mortgagees or persons deriving title from or subrogated to the rights of any such mortgagees are joined as parties the preliminary decree shall provide for the adjudication of the respective rights and liabilities of the parties to the suit in the manner and form set forth in Form No.9 or Form No.10, as the case may be of Appendix D with such variations as the circumstances of the case may require.

3. - (1) Where, before a final decree debarring the defendant from all right to redeem the mortgaged property has been passed, the defendant makes payment into Court of all amounts due from him under sub-rule (1) of rule 2, the Court shall on application made by the defendant in this behalf, pass a final decree -

a) ordering the plaintiff to deliver up the documents referred to in the preliminary decree,

and if necessary, -

b) ordering him to re-transfer at the cost of the defendant the mortgaged property as directed in the said decree,

and also if necessary

c) ordering him to put the defendant in possession of the property.

(2) where payment in accordance with sub-rule (1) has not been made the Court shall on application made by the plaintiff in this behalf, pass a final decree declaring that the defendant and all persons claiming through or under him are debarred from all right to redeem the mortgaged property and also, if necessary, ordering the defendant to put the plaintiff in possession of the property.

(3) On the passing of a final decree under sub-rule

(2) all liabilities to which the defendant is subject in respect of the mortgage or on account of the suit shall be deemed to have been discharged.

4- (1) In a suit for sale if the plaintiff succeeds

the Court shall pass a preliminary decree to the effect mentioned in clauses (a), (b) and (c) (I) of sub rule (1) of rule 2, and further directing that, in default of the defendant paying as therein mentioned the plaintiff shall be entitled to apply for a final decree directing that the mortgaged property or a sufficient part thereof be sold and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what has been found or declared under or by the preliminary decree due to the plaintiff, together with such amount as may have been adjudged due in respect of subsequent costs, charges, expenses and interest, and the balance, if any, be paid to the defendant or other persons entitled to receive the same.

(2) The Court may, on good cause shown and upon terms

to be fixed by the Court, from time to time at any time before a final decree for sale is passed, extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.

(3) In a suit for foreclosure in the case of an anomalous

mortgage, if the plaintiff succeeds the Court may at the instance of any party to the suit or of any other person interested in the mortgage-security or the right of redemption pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit, including the deposit in Court of a reasonable sum fixed by the Court to meet the expenses of the sale and to secure the performance of the terms.

(4) Where in a suit for sale or a suit for foreclosure

in which sale is ordered, subsequent mortgages or persons deriving title from or subrogated to the rights of any such mortgagees are joined as parties the

preliminary decree referred to in sub-rule (1) shall provide for the adjudication of the respective rights and liabilities of the parties to the suit in the manner and form set forth in Form No.9, form No.,10 or Form No.11 as the case may be of Appendix D with such variations as the circumstances of the case may require.

5. Where on or before the day fixed or at any time before the confirmation of a sale made in pursuance of a final decree passed under sub-rule (3) of this rule, the defendant makes payment into Court of all amounts due from him under sub-rule (1) of rule 4, the Court shall on application made by the defendant in this behalf pass a final decree or if such decree has been passed an order -

a) ordering the plaintiff to deliver up the documents referred to in the preliminary decree,

and if necessary, -

b) ordering him to transfer the mortgaged property as directed in the said decree,

and also if necessary,-

c) ordering him to put the defendant in possession of the property.

(2) \where the mortgaged property or part thereof has been sold in pursuance of a decree passed under sub-rule (3) of this rule the Court shall not pass an order under sub-rule (1) of this rule unless the defendant in addition to the amount mentioned in sub-rule (1) deposits in Court for payment to the purchaser a sum equal to five per cent of the amount of the purchase money paid into Court by the purchaser.

Where such deposit has been made the purchaser shall be entitled to an order for re-payment of the amount of the purchase-money paid into Court by him, together with a sum equal to five percent thereof.

(3) Where payment in accordance with sub-rule (1) has not been made, the Court shall on application made by the plaintiff in this behalf pass a final decree directing that the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale be dealt with in the manner provided in sub-rule (1) of rule 4.

6. Where the net proceeds of any sale held under the last preceding rule are found insufficient to pay the amount due to the plaintiff the Court, on application by him may, if the balance is legally recoverable from the defendant otherwise than out of the property sold, pass a decree for such balance.

7.- (1) In a suit for redemption if the plaintiff succeeds the Court shall pass a preliminary decree-

a) Ordering that an account be taken of what was due to the defendant at the date of such decree for -

i) principal and interest on the mortgage,

ii) the costs of suit if any awarded to him and

iii) other costs, charges and expenses properly incurred by him up to that date in respect of his mortgage security together with interest thereon; or

b) declaring the amount so due at that date; and

c) directing -

i) that, if the plaintiff pays into Court the amount so found or declared due on or before such date as the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under clause (a) or from the date on which such amount is declared in Court under clause (b) as the case may be and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses as provided in rule 10 together with subsequent interest on such sums respectively as provided in rule 11, the defendant shall deliver up the plaintiff or to such person as the plaintiff appoints all documents in his possession or power relating to the mortgaged property and shall if so required re-transfer the property to the plaintiff \at his cost free from the mortgage and from all encumbrances created by the defendant or any person claiming under him, or where the defendant claims by derived title, by those under whom he claims, and shall also if necessary put the plaintiff in possession of the property; and

ii) that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed or the plaintiff fails to pay within such time as the Court may fix the amount adjudged due in respect of subsequent costs charges expenses and interest the defendant shall be entitled to apply for a final decree-

a) in the case of a mortgage other than a usufructuary mortgage a mortgage by conditional sale or an anomalous mortgage the terms of which provide for foreclosure only and not for sale that the mortgaged property be sold or

b) in the case of a mortgage by conditional sale or such an anomalous mortgage as aforesaid, that the plaintiff be debarred from all rights to redeem the property.

(2) The Court may on good cause shown and upon terms to be fixed by the Court from time to time at any time before the passing of a final decree for foreclosure or sale as the case may be extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs charges, expenses and interest.

8.- (1) Where before a final decree debarring the plaintiff from all right to redeem the mortgaged property has been passed or before the confirmation of a sale held in pursuance of a final decree passed under sub-rule (3) of this rule, the plaintiff makes payment into Court of all amounts due from him under sub-rule (1) of rule 7, the Court shall, on application made by the plaintiff in this behalf, pass a final decree or, if such decree has been passed, an order -

a) ordering the defendant to deliver up the documents referred to in the preliminary decree,

and if necessary,-

b) ordering him to re-transfer at the cost of the plaintiff the mortgaged property as directed in the said decree,

and also if necessary,-

c) ordering him to put the plaintiff in possession of the property.

(2) Where the mortgaged property or a part thereof has been sold in pursuance of a decree passed under sub-rule (3) of this rule, the Court shall not pass an order under sub-rule (1) of this rule, unless the plaintiff in addition to the amount mentioned in sub-rule (1) deposits in Court for payment to the purchaser a sum equal to five per cent of the amount of the purchase money paid into Court by the purchaser.

Where such deposit has been made the purchaser shall be entitled to an order for re-payment of the amount of the purchase money paid into Court by him, together with a sum equal to five per cent thereof.

(3) Where payment in accordance with sub-rule (1) has not been made the Court shall on application made by the defendant in this behalf, -

a) in the case of a mortgage by conditional sale or of such an anomalous mortgage as is hereinbefore referred to in rule 7, pass a final decree declaring that the plaintiff and all persons claiming under him are debarred from all right to redeem the mortgaged property and also if necessary ordering the plaintiff to put the defendant in possession of the mortgaged property; or

b) in the case of any other mortgage, not being a usufructuary mortgage, pass a final decree that the mortgaged property or a sufficient part thereof be sold, and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what is found due to the defendant, and the balance, if any, be paid to the plaintiff or other persons entitled to receive the same]

[8.-A- Where the net proceeds of any sale held under the last preceding rule are found insufficient to pay the amount due to the defendant, the Court on application by him may, if the balance is legally recoverable from the plaintiff otherwise than out of the property sold, pass a decree for such balance]

9. Notwithstanding anything hereinbefore contained, if it appears, upon taking the account referred to in rule 7, that nothing is due to the defendant or that he has been overpaid, the Court shall pass a decree directing the defendant, if so required, to re-transfer the property and to pay to the plaintiff the amount which may be found due to him; and the plaintiff shall, if necessary, be put in possession of the mortgaged property.

[10. In finally adjusting the amount to be paid to a mortgagee in case of a foreclosure, sale or redemption, the Court shall unless in the case of costs of the suit the conduct of the mortgagee has been such as to disentitle him thereto, add to the mortgage-money such costs of the suit and other costs charges and expenses as have been properly incurred by him since the date of the preliminary decree for foreclosure sale or redemption up to the time of actual payment.

11. In any decree passed in a suit for foreclosure sale or redemption, where interest is legally recoverable, the Court may order payment of interest to the mortgagee as follows, namely:-

a) interest up the date on or before which payment of the amount found or declared due is under the preliminary decree to be made by the mortgagor or other person redeeming the mortgage -

i) on the principal amount found or declared due on the mortgage, - at the rate payable on the principal, or where no such rate is fixed, at such rate as the Court deems reasonable,

ii) on the amount of the costs of the suit awarded to the mortgagee, - at such rate as the Court deems reasonable from the date of the preliminary decree, and

iii) on the amount adjudged due to the mortgagee for costs, charges and expenses properly incurred by the mortgagee in respect of the mortgage-security up to the date of the preliminary decree and added to the mortgage money, at the rate agreed between the parties, or failing such rate, at the same rate

as is payable on the principle, or failing both such rates at nine per cent per annum; and

(b) subsequent interest up to the date of realization or actual payment at such rate as the Court deems reasonable -

i) on the aggregate of the principal sums specified in clause (a) and of the interest thereon as calculated in accordance with that clause; and

ii) on the amount adjudged due to the mortgagee in respect of such further costs charges and expenses as may be payable under rule 10.]

12. Where any property the sale of which is directed under this Order is subject to a prior mortgage, the Court may, with the consent of the prior mortgagee, direct that the property be sold free from the same giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold.

14. – (1) Such proceeds shall be brought into Court and applied as follows:-

first in payment of all expenses incident to the sale or properly incurred in any attempted sale;

secondly, in payment of whatever is due to the prior mortgagee on account of the prior mortgage and of cost properly incurred in connection therewith.

Thirdly in payment of all interest due on account of the mortgage in consequence whereof the sale was directed and of the cost of the suit in which the decree directing the sale was made;

Fourthly in payment of the principal money due on account of that mortgage; and

Lastly the residue (if any) shall be paid to the person proving himself to be interested in the property sold, or if there are more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt.

(2) Nothing in this rule or in rule 12 shall be deemed to affect the powers conferred by section 57 of the Transfer of Property Act, 1882.

14. (1) Where a mortgagee has obtained a decree for the payment of money in satisfaction of a claim arising under the mortgage,

he shall not be entitled to bring the mortgaged property to sale otherwise than by instituting a suit for sale in enforcement of the mortgage, and he may institute such suit notwithstanding anything contained in Order II, rule 2.

(2) Nothing in sub-rule (1) shall apply to ny territories to which the Transfer of Property Act, 1882 has not been extended.

[15. All the provisions contained in this Order which apply to a simple mortgage shall, so far as may be apply to a mortgage by deposit of title-deeds within the meaning of section 58, and to a charge within the meaning of section 100 of the Transfer of Property Act 1882]

## **ORDER XXXV**

### **INTERPLEADER**

1. In every suit of interpleader the plaint shall, in addition to other statements necessary for plaints, state -

a) that the plaintiff claims no interest in the subject matter in dispute other than for charges or costs;

b) the claims made by the defendants severally ; and

c) that there is no collusion between the plaintiff and any of the defendants.

2. Where the thing claimed is capable of being paid into Court or placed in the custody of the Court the Plaintiff may be required to so pay or place it before he can be entitled to any order in the suit.

3. Where any of the defendants in an interpleader-suit is actually suing the plaintiff in respect of the subject-matter of such suit, the Court in which the suit against the plaintiff is pending shall on being informed by the Court in which the interpleader suit has been instituted stay the proceedings as against him; and his costs in the suit so stayed may be provided for in such suit; but if and in so far as they are not provided for in that suit they may be added to his costs incurred in the interpleader suit.

4. – (1) At the first hearing the Court may -

a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs and dismiss him from the suit; or

b) if it thinks that justice or convenience so require retain all parties until the final disposal of the suit.

(2) Where the Court finds that the admissions of the parties or other evidence enable it to do so, it may adjudicate the title to the thing claimed.

(3) Where the admission of the parties do not enable the Court so to adjudicate it may direct -

a) that an issue or issues between the parties be framed and tried and

b) that any claimant be made a plaintiff in lieu of or in addition to the original plaintiff,

and shall proceed to try the suit in the ordinary manner.

5. Nothing in this Order shall be deemed to enable agents to sue their principals, or tenants to sue their landlords for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or the landlords.

### **Illustrations**

a) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A and claims them from B. B cannot institute an interpleader-suit against A and C.

b) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute an interpleader-suit against A and C.

6. Where the suit is properly instituted the Court may provide for the costs of the original plaintiff by giving him a charge on the thing claimed or in some other effectual way.

### **ORDER XXXVI**

#### **SPECIAL CASE**

1.-(1) Parties claiming to be interested in the decision of any question of fact or law may enter into an agreement in writing stating such question in the form of a case for the opinion of the Court and providing that, upon the finding of the Court with respect to such question,-

a) a sum of money fixed by the parties or to be determined by the Court shall be paid by one of the parties to the other of them ; or

b) some property, movable or immovable, specified in the agreement, shall be delivered by one of the parties to the other of them; or

c) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

(2) Every case stated under this rule shall be divided into consecutively numbered paragraphs and shall concisely state such facts and specify such documents as may be necessary to enable the Court to decide the question raised thereby.

2. Where the agreement is for the delivery of any property, or for the doing, or the refraining from doing, any particular act, the estimated value of the property to be delivered or to which the act specified has reference shall be stated in the agreement.

3.-(1) The agreement if framed in accordance with the rules hereinbefore contained, may be filed in the Court which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement.

(2) The agreement when so filed shall be numbered and registered as a suit between one or more of the parties claiming to be interested as plaintiff or plaintiffs, and the other or the others of them as defendant or defendants; and notice shall be given to all the parties to the agreement other than the party or parties by whom it was presented.

4. Where the agreement has been filed the parties to it shall be subject to the jurisdiction of the Court and shall be bound by the statements contained therein.

5.-(1) The case shall be set down for hearing as a suit instituted in the ordinary manner, and the provisions of this Code shall apply to such suits so far as the same are applicable.

(2) Where the Court is satisfied, after examination of the parties or after taking such evidence as it thinks fit,-

a) that the agreement was duly executed by them,-

b) that they have a bona fide interest in the question stated therein and

c) that the same is fit to be decided,

it shall proceed to pronounce judgement thereon in the same way as in an ordinary suit and upon the judgement so pronounced a decree shall follow.

## **ORDER XXXVII**

### **SUMMARY PROCEDURE ON NEGOTIABLE INSTRUMENTS**

1. This order shall apply only to the High Court [to the District Court and to any other Civil Court notified in this behalf by the High Court.]

2. – (1) All suits upon bills of exchange hundies or promissory notes, may, in case the plaintiff desires to proceed hereunder be instituted by presenting a plaint in the form prescribed; but the summons shall be in Form No.4 in Appendix B or in such other form as may be from time to time prescribed.

(2) In any case in which the plaint and summons are in such forms respectively the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter provided so to appear and defend; and in default of his obtaining such leave or of his appearance and defence in pursuance thereof, the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree -

[a] for the principal sum due on the instrument and for interest calculated in accordance with the provisions of section 79 or section 80 as the case may be of the Negotiable Instruments Act 1881 up to the date of the institution of the suit or for the sum mentioned in the summons whichever is less and for interest up to the date of the decree at the same rate or at such other rate as the Court thinks fit; and

b) for such subsequent interest if any as the Court may order under section 34 of this Code; and

d) for such sum for costs as may be prescribed:

Provided that if the plaintiff claims more than such fixed sum for costs the costs shall be ascertained in the ordinary way.

(3) A decree passed under this rule may be executed forthwith.

3. - (1) The Court shall upon application by the defendant give leave to appear and to defend the suit, upon affidavits which disclose such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application.

(2) Leave to defend may be given unconditionally or subject to such terms as to payment into Court giving security, framing and recording issues or otherwise as the Court thinks fit.

[(3) The provisions of section 5 of the Limitation Act 1908 (IX of 1908) shall apply to applications under sub-rule (1)].

4. After decree the Court may under special circumstances, set aside the decree and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the Court so to do and on such terms as the Court thinks fit.

5. In any proceedings under this Order the Court may order the bill hundi or note on which the suit is founded to be forthwith deposited with an officer of the Court and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

6. The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment or otherwise, by reason of such dishonour, as he has under this Order for the recovery of the amount of such bill or note.

7. Save as provided by this Order the procedure in suits hereunder shall be the same as the procedure in suits instituted in the ordinary manner.

## **ORDER XXXVIII**

### **ARREST AND ATTACHMENT BEFORE JUDGMENT**

Arrest before Judgment

1. Where at any stage of a suit other than a suit of the nature referred to in section 16, clauses (a) to (d), the Court is satisfied by affidavit or otherwise, -

a) that the defendant with intent to delay the plaintiff or to avoid any process of the Court or to obstruct or delay the execution of any decree that may be passed against him,-

i) has absconded or left the local limits of the jurisdiction of the Court, or

ii) is about to abscond or leave the local limits of the the jurisdiction of the Court or

iii) has disposed of or removed from the local limits of the jurisdiction of the Court his property or any part thereof, or

b) that the defendant is about to leave [Pakistan] under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not furnish security for his appearance:

Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff's claim; and such sum shall be held in deposit by the Court until the suit is disposed of or until the further order of the Court.

2.- (1) Where the defendant fails to show such cause the Court shall order him either to deposit in Court money or other property sufficient to answer the claim against him, or to furnish security for his appearance at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the suit, or make such order as it thinks fit in regard to the sum which may have been paid by the defendant under the proviso to the last preceding rule.

(2) Every surety for the appearance of a defendant shall bind himself in default of such appearance to pay any sum of money which the defendant may be ordered to pay in the suit.

3.- (1) A surety for the appearance of a defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation.

(2) On the application being made, the Court shall summon the defendant to appear or, if it thinks fit, may issue a warrant for his arrest in the first instance.

(3) On the appearance of the defendant in pursuance of the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

4. Where the defendant fails to comply with any order under rule 2 or rule 3, the Court may commit him to [.....] prison until the decision of the suit or, where a decree is passed against the defendant, until the decree has been satisfied:

Provided that no person shall be detained in prison under this rule in any case for a longer period than six months, nor for a longer period than six weeks when the amount or value of the subject-matter of the suit does not exceed fifty rupees:

Provided also that no person shall be detained in prison under this rule after he has complied with such order.

#### Attachment before Judgment

5. – (1) Where at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant with intent to obstruct or delay the execution of any decree that may be passed against him, -

a) is about to dispose of the whole or any part of his property, or

b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court,

the court may direct the defendant, within a time to be fixed by it either to furnish security in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

6. – (1) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Court the Court may order that the property specified, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, be attached.

(2) Where the defendant shows such cause or furnishes the required security, and the property specified or any portion of it has been attached, the Court shall order the attachment to be withdrawn, make such other order as it thinks fit.

6. Save as otherwise expressly provided, the attachment shall be made in the manner provided for the attachment of property in execution of a decree.

7. Save as other wise expressly provided, the attachment shall be made in the manner provided for the attachment of property in execution of a decree.

8. Where any claim is preferred to property attached before judgment such claim shall be investigated in the manner hereinbefore provided for the investigation of claims to property attached in execution of a decree for the payment of money.

9. Where an order is made for attachment before judgment, the Court shall order the attachment to be withdrawn when the defendant furnishes the security required, together with security for the costs of the attachment, or when the suit is dismissed.

10. Attachment before judgment shall not affect the rights, existing prior to the attachment of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

11. Where property is under attachment by virtue of the provisions of this Order and a decree is subsequently passed in favour of the plaintiff, it shall not be necessary upon an application for execution of such decree to apply for a re-attachment of the property.

12. Nothing in this Order shall be deemed to authorise the plaintiff to apply for the attachment of any agricultural produce in the possession of an agriculturist, or to empower the Court to order the attachment or production of such produce.

[13. Nothing in this Order shall be deemed to empower any Court of Small Causes to make an order for the attachment of immovable property.]

## **ORDER XXXIX**

### **TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS**

#### Temporary Injunctions

1. Where in any suit it is proved by affidavit or otherwise-

a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

b) that the defendant threatens or intends to remove or dispose of his property with a view to defraud his creditors,

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition

of the property as the Court thinks fit, until the disposal of the suit or until further orders.

2. (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction keeping an account giving security or other wise, as the Court thinks fit.

(3) In case of disobedience, or breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in [.....] prison for a term not exceeding six months, unless in the meantime the Court directs his release.

(4) No attachment under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues the property attached may be sold, and out of the proceeds the Court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto.

[ (2-A) An interim injunction passed under rule 1 or 2 in the absence of defendant shall not ordinarily exceed fifteen days:

Provided that such injunction may be extended for failure of its service on the defendant when such failure is not attributable to the plaintiff or when the defendant seeks time for defence of application for injunction.

(2-B) The order of injunction made under rule 1 or 2 after hearing the parties or after notice to the defendant shall cease to have effect on the expiration of six months unless extended by the court after hearing the parties again and for reasons to be recorded for such extension:

Provided that report of such extension shall be submitted to the High Court].

[3. The Court shall in all cases, before granting an injunction direct notice of the application for the same to be given to the opposite-party:

[Provided that except in the case of sale of goods for default in payment at the stipulated time of a debt in respect of which the goods were pledged with any bank, or where the injunction is to be granted against Government or a Government servant as such or any statutory authority, board or corporation set up or established by Government in any case not involving the ejection of any person from or the demolition of, any premises, the Court may where it appears that the object of granting injunction would be defeted by the delay, dispense with such notice:

Provided further that the period of notice under this rule to Government or a Government servant as such or any statutory authority, board or corporation set up or established by Government shall not be less than two days nor exceed seven days.]

4. Any order for an injunction may be discharged, or varied, or set aside by the Court on application made thereto by any party dissatisfied with such order.

[ 4-A. An injunction granted by a Court in a suit which seeks to question the validity or legal effect of any order made, proceedings taken or act done by authority or person, which has been made, taken or done, or purports to have been made, taken or done under any law which is specified in Part I of the First Schedule to the Constitution or relates to, or is connected with assessment or collection of public revenues shall cease to have effect on the expiration of a period of [ six months] following the day on which it is made, unless the case is finally decided, or the injunction is discharged or set aside, by the Court earlier.

Explanation – In this rule, 'public revenues' includes the dues of any bank owned by the Federal Government or of any corporation or undertaking owned or controlled by the Federal Government or a Provincial Government.]

5. An injunction directed to a corporation is binding not only on the corporation itself, but also on all members and officers of the corporation whose personal action it seeks to restrain.

6. The Court may, on the application of any party to a suit, order the sale by any person named in such order, and in such manner and on such terms as it thinks fit, of any movable property, being the subject-matter of suit or attached before judgment in such suit, which is subject to speedy and natural decay or which for any other just and sufficient cause it may be desirable to have sold at once.

7. (1) The Court may, on the application of any party to a suit and on such terms as it thinks fit -

a) make an order for the detention, preservation or inspection of any property which is the subject matter of such suit or as to which any question may arise therein;

b) for all or any of the purposes aforesaid authorise any person to enter upon or into any land or building in the possession of any other party to such suit; and

c) for all or any of the purposes aforesaid authorise any samples to be taken or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

(2) The provisions as to execution of process shall apply, mutatis mutandis, to persons authorised to enter under this rule.

8. – (1) An application by the plaintiff for an order under rule 65 or rule 7 may be made after notice to the defendant at any time after institution of the suit.

(2) An application by the defendant for a like order may be made after notice to the plaintiff at any time after appearance.

9. Where land paying revenue to Government or a tenure liable to sale, is the subject-matter of a suit, if the party in possession of such land or tenure neglects to pay the government revenue, or the rent due to the proprietor of the tenure, as the case may be and such land or tenure is consequently ordered to be sold any other party to the suit claiming to have an interest in such land or tenure may upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court) be put in immediate possession of the land or tenure;

and the Court in its decree may award against the defaulter the amount so paid, with interest thereon at such rate as the Court thinks fit, or may charge the amount so paid with interest thereon at such rate as the Court orders in any adjustment of accounts which may be directed in the decree passed in the suit.

10. Where the subject matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party or that it belongs or is due to another party the Court may order the same to be deposited in court or delivered to such last named party with or without security subject to the further direction of the Court.

## **ORDER XL**

### **APPOINTMENT OF RECEIVERS**

1. – (1) Where it appears to the Court to be just and convenient, the Court may by order -

a) appoint a receiver of any property, whether before or after decree;

b) remove any person from the possession or custody of the property;

c) commit the same to the possession, custody or management of the receiver; and

d) confer upon the receiver all such powers as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has or such of those powers as the Court thinks fit.

(2) Nothing in this rule shall authorise the court to remove from the possession or custody of property any person whom any party to the suit has not present right so to remove.

2. The Court may by general or special order fix the amount to be paid as remuneration for the service of the receiver.

3. Every receiver so appointed shall -

a) furnish such security (if any as the Court thinks fit, duly to account for what he shall receive in respect of the property;

b) submit his accounts at such periods and in such form as the Court directs;

c) pay the amount due from him as the Court directs; and

d) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

4. Where a receiver -

a) fails to submit his accounts at such periods and in such form as the Court directs, or

b) fails to pay the amount due from him as the Court directs or

c) occasions loss to the property by his wilful default or gross negligence,

the Court may direct his property to be attached and may sell such property and may apply the proceeds to make good any amount

found to be due from him or any loss occasioned by him, and shall pay the balance (if any) to the receiver.

5. Where the property is land paying revenue to the Government or land of which the revenue has been assigned or redeemed and the Court considers that the interests of those concerned will be promoted by the management of the Collector, the Court may, with the consent of the Collector appoint him to be receiver of such property.

## **ORDER XLI**

### **APPEALS FROM ORIGINAL DECREES**

1.- (1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded.

(2) The memorandum shall set forth concisely and under distinct heads the grounds of objection to the decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively.

2. The appellant shall not except by leave of the Court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal; but the Appellate Court in deciding the appeal, shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of the Court under this rule:

Provided that the Court shall not rest its decision on any other ground unless the party who may be affected thereby has had sufficient opportunity of contesting the case on that ground.

3. – (1) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there.

(2) Where the Court rejects any memorandum it shall record the reasons for such rejection.

(3) Where a memorandum of appeal is amended, the Judge, or such officer as he appoints in this behalf, shall sign or initial the amendment.

4. Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Appellate

Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be.

### **STAY OF PRECEEDINGS AND OF EXECUTION**

5. – (1) An appeal shall not operate as a stay of proceedings under a decree or order, appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

(2) Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule(2) unless the Court making it is satisfied,

a) that substantial loss may result to the party applying for stay of execution unless the order is made;

b) that the application has been made without unreasonable delay; and

c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) Notwithstanding anything contained in sub-rule(3), the Court may make an ex parte order for stay of execution pending the hearing of the application.

6. – (1) Where an order is made for the execution of a decree from which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such property and for the due performance of the decree or order of the Appellate Court, or the Appellate Court may for like cause direct the Court which passed the decree to take such security.

(2) Where an order has been made for the sale of immovable property in execution of a decree, and an appeal is pending from such decree, the sale shall on the application of the judgment debtor to the Court which made the order, be stayed on such terms as to giving security or otherwise as the Court thinks fit until the appeal is dispose of.

7. [No security to be required from the Government or a public officer in certain cases.] Rep. By the A.O. 1937.

8. The powers conferred by Rules 5 and 6 shall be exercise-able where an appeal may be or has been preferred not from the decree but from an order made in execution of such decree:

[Provided that, where such appeal has been preferred by judgment-debtor he shall be required, unless the Court is of opinion that prima facie the appeal is one which must succeed owing to an error apparent on the face of the record.-

a) in the case of a decree for the payment of money, to deposit the decretal amount or to furnish security for its payment; and

b) in the case of any other decree, to furnish security for the due performance of the decree]

### **PROCEDURE ON ADMISSION OF APPEAL**

9. – (1) Where a memorandum of appeal is admitted, the Appellate Court or the proper officer of that Court shall endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose.

(2) Such book shall be called the Register of Appeals.

10.- (1) The Appellate court may, in its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both:

Provided that the Court shall demand such security in all cases in which the appellant is residing out of [Pakistan] and is not possessed of any sufficient immovable property within [Pakistan] other than the property (if any) to which the appeal relates.

(2) Where such security is not furnished within such time as the Court orders the Court shall reject the appeal.

11. – (1) The Appellate Court, after sending for the record if it thinks fit so to do, and after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day may dismiss the appeal without sending notice to the Court from whose decree the appeal is preferred and without serving notice on the respondent or his pleader.

(2) If on the day fixed or any other day to which the hearing may be adjourned the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

(3) The dismissal of an appeal under this rule shall be notified to the Court from whose decree the appeal is preferred.

12. – (1) Unless the Appellate Court dismisses the appeal under rule 11, it shall fix a day for hearing the appeal.

(2) Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent and the time necessary for the service of the notice of appeal so as to allow the respondent sufficient time to appear and answer the appeal on such day.

13. – (1) Where the appeal is not dismissed under rule 11, the Appellate Court shall send notice of the appeal to the Court from whose decree the appeal is preferred.

(2) Where the appeal is from the decree of a Court, the records of which are not deposited in the Appellate Court, the Court receiving such notice shall send with all practicable dispatch all material papers in the suit or such papers as may be specially called for by the Appellate Court.

(3) Either party may apply in writing to the Court from whose decree the appeal is preferred specifying any of the papers in such Court of which he requires copies to be made; and copies of such papers shall be made at the expense of and given to the applicant.

14. – (1) Notice of the day fixed under rule 12 shall be affixed in the Appellate Court-house and a like notice shall be sent by the Appellate Court to the Court from whose decree the appeal is preferred and shall be served on the respondent or on his pleader in the Appellate court in the manner provided for the service on a defendant of a summons to appear and answer; and all the provisions applicable to such summons and to proceedings with reference to the service thereof shall apply to the service of such notice.

(2) Instead of sending the notice to the Court from whose decree the appeal is preferred, the Appellate court may itself cause the notice to be served on the respondent or his pleader under the provisions above referred to.

15. The notice to the respondent shall declare that if he does not appear in the Appellate Court on the day so fixed the appeal will be heard ex parte.

### **PROCEDURE ON HEARING**

16.- (1) On the day fixed or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.

(2) The Court shall then if it does not dismiss the appeal at once, hear the respondent against the appeal and in such case the appellant shall be entitled to reply.

17. – (1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing the Court may make an order that the appeal be dismissed.

(2) Where the appellant appears and the respondent does not appear, the appeal shall be heard ex parte.

18. Where on the day fixed or on any other day to which the hearing may be adjourned it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit within the period fixed the sum required to defray the cost of serving the notice the Court may make an order that the appeal be dismissed

Provided that no such order shall be made although the notice has not been served upon the respondent, if on any such day the respondent appears when the appeal is called on for hearing.

19. – (1) Where an appeal is dismissed under rule 11, sub-rule (2) of rule 17 or rule 18 the appellant may apply to the Appellate Court for the re-admission of the appeal; and where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.

[(2) The provisions of section 5 of the Limitation Act 1908 (IX of 1908) shall apply to an application for re-admission of an appeal dismissed under sub-rule (2) of rule 11 or sub-rule (1) of rule 17.]

20. Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal is interested in the result of the appeal the Court may adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent.

21. – (1) Where an appeal is heard ex parte and judgment is pronounced against the respondent, he may apply to the Appellate court to re-hear the appeal; and if he satisfies the Court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

[(2) The provisions of section 5 of the Limitation Act, 1908 (IX of 1908) shall apply to applications under sub-rule (1).]

22. – (1) Any respondent though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the Court below but take any cross-objection to the decree which he could have taken by way of appeal provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

(2) Such cross-objection shall be in the form of a memorandum and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal shall apply thereto.

(3) Unless the respondent files with the objection a written acknowledgment from the party who may be affected by such objection or his pleader of having received a copy thereof, the Appellate Court shall cause a copy to be served, as soon as may be after the filing of the objection, on such party or his pleader at the expense of the respondent.

(4) Where in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(5) The provisions relating to pauper appeals shall, so far as they can be made applicable apply to an objection under this rule.

23. Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall subject to all just exceptions be evidence during the trial after remand.

24. Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment the Appellate Court may after resettling the issues if necessary finally determine the suit, notwithstanding that the judgment of the court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

25. Where the court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact which appears to the Appellate Court essential to the right decision of the suit upon the merits the Appellate Court may if necessary, frame issues,

and refer the same for trial to the Court from whose decree the appeal is preferred and in such case shall direct such Court to take the additional evidence required.

And such court shall proceed to try such issues, and shall return the evidence to the appellate Court together with its findings thereon and the reasons therefore.

26. – (1) Such evidence and findings shall form part of the record in the suit; and either party may, within a time to be fixed by the Appellate Court, present a memorandum of objections to any findings.

(2) After the expiration of the period so fixed for presenting such memorandum the Appellate Court shall proceed to determine the appeal.

27. – (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary in the appellate Court, But if -

a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted or,

a) The Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

The Appellate Court may allow such evidence or document to be produced or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court the Court shall record the reason for its admission.

28. Wherever additional evidence is allowed to be produced the Appellate Court may either take such evidence or direct the Court from whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court.

29. Where additional evidence is directed or allowed to be taken the Appellate Court shall specify the points to which the evidence is to be confined and record on its proceedings the points so specified.

## **JUDGMENT IN APPEAL**

30. The Appellate Court after hearing the parties or their pleaders and referring to any part of the proceedings whether on appeal or in the Court from whose decree the appeal is preferred to which reference maybe considered necessary, shall pronounce judgment in open Court, either

at once or on some future day of which notice shall be given to the parties or their pleaders.

31. The judgment of the Appellate Court shall be in writing and shall state -

a. the points for determination;

b. the decision thereon;

c. the reasons for the decision; and

d. where the decree appealed from is reversed or varied, the relief to which the appellant is entitled;

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

32. The judgment may be for confirming, varying or reversing the decree from which the appeal is preferred, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be made in appeal the Appellate Court may pass a decree or make an order accordingly.

33. The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties although such respondents or parties may not have filed any appeal or objection:

[Provided that the Appellate Court shall not make any order under section 35-A in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.]

#### Illustration

A claims a sum of money as due to him from X or Y, and in a suit against both obtains a decree against X, X appeals and A and Y are respondents. The Appellate Court decides in favour of X. It has power to pass a decree against Y.

34. Where the appeal is heard by more Judges than one, any Judge dissenting from the judgment of the Court shall state in writing the decision or order which he thinks should be passed on the appeal and he may state his reasons for the same.

## **DECREE IN APPEAL**

35. – (1) The decree of the Appellate Court shall bear date the day on which the judgment was pronounced.

(2) The decree shall contain the number of the appeal the names and descriptions of the appellant and respondent and a clear specification of the relief granted or other adjudication made.

(3) The decree shall also state the amount of costs incurred in the appeal and by whom or out of what property, and in what proportions such costs and the costs in the suit are to be paid.

(4) The decree shall be signed and dated by the Judge or Judges who passed it:

Provided that where there are more Judges than one and there is a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree.

36. Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Appellate Court and at their expense.

37. A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed from and shall be filed with the original proceedings in the suit and an entry of the judgment of the Appellate Court shall be made in the register of civil suits.

## **ORDER XLII**

### **AAPPEALS FROM APPELLATE DECREES**

1. The rules of Order XLI shall apply so far as may be to appeals from Appellate decrees.

## **ORDER XLIII**

### **APPEALS FROM ORDERS**

1. An appeal shall lie from the following orders under the provisions of section 104, namely:-

a) an order under rule 10 of Order VII returning a plaint to be presented to the proper Court;

- b) an order under rule 10 of Order VIII pronouncing judgment against a party;
- c) an order under rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;
- d) an order under the rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed ex parte;
- e) an order under rule 4 of Order X pronouncing judgment against a party;
- f) an order under rule 21 of Order XI
- g) an order under rule 10 of Order XVI pronouncing judgment against a party;
- h) an order under rule 20 of Order XVI pronouncing judgment against a party;
- i) an order under rule 34 of Order XXI on an objection to the draft of a document or of an endorsement;
- [ii) an order under rule 62 or rule 103 of Order XXI relating to the right title or interest of the claimant or objector in attached property;]
- j) an order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale;
- k) an order under rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit;
- l) an order under rule 10 of Order XXII giving or refusing to give leave;
- m) an order under rule 3 of Order XXIII recording or refusing to record an agreement compromise or satisfaction;
- n) an order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;
- o) an order [under rule 2 rule 4 or rule 7] of Order XXIV refusing to extend the time for the payment of mortgage money;
- p) an order in interpleader suits under rule 3, rule 4 or rule 6 of Order XXXV;
- q) an order under rule 2, rule 3 or rule 6 of Order XXXVIII;
- r) an order under rule 1, rule 2 rule 4 or rule 10 of Order XXXIX;
- s) an order under rule 1 or rule 4 of Order XL;

- t) an order of refusal under rule 19 of Order XLI to readmit or under rule 21 of Order XLI to re-hear an appeal;
- u) an order under rule 23 of Order XLI remanding a case where an appeal would lie from the decree of the Appellate Court;
- v) an order made by any Court other than a High Court refusing the grant of a certificate under rule 6 of Order XLV;
- w) an order under rule 4 of Order XL:VII granting an application for review.

1. The rules of Order XLI shall apply so far as may be to appeals from orders.

[3. - (1) Where an appeal against an order is preferred during the pendency of a suit the appellant shall before presenting the appeal give notice of such appeal to the respondent or his advocate by delivering a copy of the memorandum and grounds of appeal alongwith a copy of the order appealed against [either personally or through registered post acknowledgement due and the postal or other receipt shall be filed with the memorandum of appeal for the record of the appellate Court].

(2) On receipt of notice referred to in sub-rule (1) the respondent may with the permission of the Court appear before it and contest the appeal and may be awarded costs on dismissal of the appeal in limine.

4. The provisions of rule 3 shall mutatis mutandis, apply to all applications filed before an appellate Court during the pendency of a suit.]

## **ORDER XLIV**

### **PAUPER APPEALS**

1. Any person entitled to prefer an appeal who is unable to pay the fee required for the memorandum of appeal may present an application accompanied by a memorandum of appeal and may be allowed to appeal as a pauper subject in all matters including the presentation of such application to the provisions relating to suits by paupers in so far as those provisions are applicable:

Provided that the Court shall reject the application unless upon a perusal thereof and of the judgment and decree appealed from it sees reason to think that the decree is contrary to law or to some usage having the force of law or is otherwise erroneous or unjust .

2. The inquiry into the pauperism of the applicant may be made either by the Appellate Court or under the orders of the Appellate Court by the Court from whose decision the appeal is preferred:

Provided that if the applicant was allowed to sue or appeal as a pauper in the Court from whose decree the appeal is preferred no further inquiry in respect of his pauperism shall be necessary unless the Appellate Court sees cause to direct such inquiry.

## **ORDER XLV**

### **APPEALS TO THE [SUPREME COURT]**

[1. In this Order unless there is something repugnant in subject or context the expression "decree" shall include a judgment or a final Order.]

2. Whoever desires to appeal to [the Supreme Court] shall apply by petition to the Court whose decree is complained of.

[3. - (1) A petition made under rule 2 shall briefly state the grounds of appeal and pray for a certificate.]

(2) Upon receipt of such petition the Court shall direct notice to be served on the opposite-party to show cause why the said certificate should not be granted:

[Provided that no notice shall be directed to be served on or given to the opposite party or to the legal representative of a deceased opposite party in a case where such opposite party did not appear either at the hearing in the Court whose decree is complained of or at any proceedings subsequent to the decree of that Court.]

[(3) The Court may if the opposite party in response to the notice issued under sub-rule (2) appears after hearing both the parties or if the opposite party does not appear in response to such notice then after hearing the party making the petition, grant or refuse the certificate]

(4) If on the date fixed for the hearing the party making the petition does not appear and the opposite party appears in response to such notice or if both the parties do not appear on such date the petition shall be dismissed.]

4. for the purposes of pecuniary valuation suits involving substantially the same questions for determination and decided by the same judgment may be consolidated; but suits decided by separate judgments shall not be consolidated notwithstanding that they involve substantially the same questions for determination.

5. In the event of any dispute arising between the parties as to the amount or value of the subject matter of the suit in the Court of first instance or as to the amount or value of the subject matter in dispute on appeal to [the Supreme Court], the Court to which a petition for a certificate is made under rule 2 may, if it thinks fit refer such dispute for report to the Court of first instance which last mentioned Court shall proceed to determine such amount or value and shall return its report together with the evidence to the Court by which the reference was made.

6. [Omitted by Federal Adaptation of Laws Order (P.O. 4 of 1975) w.e.f. 1st August 1975]

7. – (1) Where the certificate is granted the applicant shall within [ninety days or such further period, not exceeding sixty days as the Court may upon cause shown allow] from the date of the decree complained of or within six weeks from the date of the grant of the certificate whichever is the later date, -

a) furnish security [in cash or in Government securities] for the costs of the respondent and

b) deposit the amount required to defray the expense of translating, transcribing, indexing [printing] and transmitting to [the Supreme Court] a correct copy of the whole record of the suit, except -

(1) formal documents directed to be excluded by any [Rule of the Supreme Court] in force for the time being

(2) papers which the parties agree to exclude;

(3) accounts or portions of accounts which the officer empowered by the Court for that purpose considers unnecessary and which the parties have not specifically asked to be included; and

(4) such other documents as the High Court may direct to be excluded;

[Provided that the Court at the time of granting the certificate may after hearing any opposite party who appears order on the ground of special hardship that some other form of security may be furnished;

Provided further that no adjournment shall be granted to an opposite party to contest the nature of such security.

8. Where such security has been furnished and deposit made to the satisfaction of the Court the Court shall -

a) declare the appeal admitted

b) give notice thereof to the respondent

c) transmit to [the Supreme Court] under the seal of the Court a correct copy of the said record except as aforesaid and

d) give to either party one or more authenticated copies of any of the papers in the suit on his applying therefore any paying the reasonable expenses incurred in preparing them.

9. At any time before the admission of the appeal the Court may upon cause shown revoke the acceptancy of any such security and make further directions thereon.

9.-A. [Omitted by Federal Adaptation of Laws Order (P.O. 4 of 1975) with effect from 1st August 1975.]

10. Where at any time after the admission of an appeal but before the transmission of the copy of the record except as aforesaid to [the Supreme Court] wuch security appears inadequate.

Or further payment is required for the purpose of translating, transcribing, printing, indexing or transmitting the copy of the record except as aforesaid,

The Court may order the appellant to furnish within a time to be fixed by the Court other and sufficient security or to make within like time the required payment.

11. Where the appellant fails to comply with such order, the proceedings shall be stayed.

And the appeal shall not proceed without an order in this behalf of [Supreme Court],

And in the meantime execution of the decree appealed from shall not be stayed.

12. When the copy of the record except as aforesaid, has been transmitted to [the supreme Court] the appellant may obtain a refund of the balance (if any) of the amount which he has deposited under rule 7.

13. – (1) Notwithstanding the grant of a certificate for the admission of any appeal, the decree appealed from shall be unconditionally executed, unless the Court otherwise directs.

(2) The Court may, if it thinks fit, on special cause shown by any party interested in the suit, or otherwise appearing to the Court,

-

a) impound any movable property in dispute or any part thereof, or

b) allow the decree appealed from to be executed, taking such security from the respondent as the Court thinks fit for the due performance of any order which [the Supreme Court] may make on the appeal, or

c) stay the execution of the decree appealed from taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed from or of any order which [the Supreme Court] may make on the appeal, or

d) place any party seeking the assistance of the Court under such conditions or give such other direction respecting the subject-matter of the appeal, as

it thinks fit, by the appointment of a receiver or otherwise.

14. – Where at any time during the pendency of the appeal the security furnished by either party appears inadequate, the Court may, on the application of the other party, require further security.

(2) in default of such further security being furnished as required by the Court, -

(a) if the original security was furnished by the appellant, the Court may, on the application of the respondent, execute the decree appealed from as if the appellant had furnished no such security;

(b) if the original security was furnished by the respondent, the Court shall, so far as may be practicable, stay the further execution of the decree, and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject-matter of the appeal as it thinks fit.

15. – (1) Whoever desires to obtain execution of any order of [the Supreme Court] shall apply by petition, accompanied by a certified copy of the decree passed or order made in appeal and sought to be executed, to the Court from which the appeal to [the Supreme Court] was preferred.

(2) Such Court shall transmit the order of [the Supreme Court] to the Court which passed the first decree appealed from, or to such other Court as [the Supreme Court] by such order may direct, and shall (upon the application of either party) give such directions as may be required for the execution of the same; and the Court to which the said order is so transmitted shall execute it accordingly, in the manner and according to the provisions applicable to the execution of its original decrees.

[(3) \* \* \* \* \*]

[(4) Unless [the Supreme Court] is pleased otherwise to direct, no order of [the Supreme Court] shall be inoperative on the ground that no notice has been served on or given to the legal representative of any deceased opposite-party or deceased respondent in a case where such opposite-party or respondent did not appear either at the hearing in the Court whose decree was complained of or at any proceedings subsequent to the decree of that Court but such order shall have the same force and effect as if it had been made before the death took place.]

16. The orders made by the Court which executes the order of [the Supreme Court], relating to such execution, shall be appealable in the same manner and subject to the same rules as the orders of such Court relating to the execution of its own decrees.

17. [Appeals to the Federal Court]. Omitted by the Federal Court Act 1941 (XXI of 1941), S.2.

## **ORDER XLVI**

### **REFERENCE**

1. Where before or on the hearing of a suit or an appeal in which the decree is not subject to appeal, or where, in the execution of any such decree, any question of law or usage having the force of law arises on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained and refer such statement with its own opinion on the point for the decision of the High Court.

2. The Court may either stay the proceedings or proceed in the case notwithstanding such reference, and may pass a decree or make an order contingent upon the decision of the High Court on the point referred;

But no decree or order shall be executed in any case in which such reference is made until the receipt of a copy of the judgment of the High Court upon the reference.

3. The High Court, after hearing the parties if they appear and desire to be heard, shall decide the point so referred, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made; and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.

4. The costs (if any) consequent on a reference for the decision of the High Court shall be costs in the case.

5. Where a case is referred to the High Court under rule 1, the High Court may return the case for amendment, and may alter, cancel or set aside any decree or order which the Court making the reference has passed or made in the case out of which the reference arose, and make such order as it thinks fit.

6.-(1) Where at any time before judgment a Court in which a suit has been instituted doubts whether the suit is cognizable by a Court of Small Causes or is not so cognizable, it may submit the record to the High Court, with a statement of its reasons for the doubt as to the nature of the suit.

(2) On receiving the record and statement, the High Court may order the Court either to proceed with the suit or to return the plaint for presentation to such other Court as it may in its order declare to be competent to take cognizance of the suit.

7.-(1) Where it appears to a District Court that a Court subordinate thereto has, by reason of erroneously holding a suit to be cognizable by a Court of Small Causes or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or if required by a party shall submit the record to the High Court with a statement of its reasons for considering the opinion of the subordinate Court with respect to the nature of the suit to be erroneous.

(2) On receiving the record and statement the High Court may make such order in the case as it thinks fit.

(3) With respect to any proceedings subsequent to decree in any case submitted to the High Court under this rule, the High Court may make such order as in the circumstance appears to it to be just and proper.

(4) A Court subordinate to a District Court shall comply with any requisition which the District Court may make for any record or information for the purpose of this rule.

## **ORDER XLVII**

### **REVIEW**

1.- (1) Any person considering himself aggrieved -

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred.

(b) By a decree or order from which no appeal is allowed, or

(c) By a decision on a reference from a Court of Small Causes,

And who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

2. An application for review of a decree or order of a Court, not being a High Court, upon some ground other than the discovery of such new and important matter or evidence as is referred to in rule 1 or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only to the Judge who passed the decree or made the order sought to be reviewed; but any such application may, if the Judge who passed the decree or made the order has ordered notice to issue under rule 4, sub-rule (2), proviso, (a) be disposed of by his successor.

1. The provisions as to the form of preferring appeal shall apply, mutatis mutandis, to applications for review.

4.-(1) Where it appears to the Court that there is not sufficient ground for a review, it shall reject the application.

(2) Where the Court is of opinion that the application for review should be granted it shall grant the same;

Provided that -

(a) no such application shall be granted without previous notice to the opposite-party to enable him to appear and be heard in support of the decree or order, a review of which is applied for; and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which, the applicant alleges was not within his knowledge or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation.

5. Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application and no other judge or judges of the Court shall hear the same.

6.- (1) Where the application for a review is heard by more than one Judge and the Court is equally divided, the application shall be rejected.

(2) Where there is a majority the decision shall be according to the opinion of the majority.

7.-(1) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to on the ground that the application was -

(a) in contravention of the provisions of rule 2,

(b) in contravention of the provisions of rule 4, or

(c) after the expiration of the period of limitation prescribed therefore and without sufficient cause.

Such objection may be taken at once by an appeal from the order granting the application or in any appeal from the final decree or order passed or made in the suit.

(2) Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

(3) No order shall be made under sub rule (2) unless notice of the application has been served on the opposite-party.

8. When an application for review is granted, a note thereof shall be made in the register and the Court may at once re-hear the case or make, such order in regard to the re-hearing as it thinks fit.

[9. - (1) No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained.

(2) Nothing in this order shall apply to any judgment pronounced or order made by the Supreme Court.]

## **ORDER XLVIII**

### **MISCELLANEOUS**

1. – (1) Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs.

(2) The court-fee chargeable for such service shall be paid within a time to be fixed before the process is issued.

2. All orders, notices and other documents required by this Code to be given to or served on any person shall be served in the manner provided for the service of summons.

3. The forms given in the appendices, with such variation as the circumstances of each case may require shall be used for the purposes therein mentioned.

## **ORDER XLIX**

### **HIGH COURTS**

1. Notice to produce documents, summonses to witnesses, and every other judicial process, issued in the exercise of the original civil jurisdiction of the High Court, and of its matrimonial, testamentary and intestate jurisdictions, except summonses to defendants, writs of execution and notices to respondents may be served by the attorneys in the suits, or by persons employed by them, or by such other persons as the High Court, by any rule or order, directs.

2. Nothing in this Schedule shall be deemed to limit or otherwise affect any rules in force at the commencement of this Code for the taking of evidence or the recording of judgment and orders by a High Court.

3. The following rules shall not apply to any High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, namely:-

1) rule 10 and rule 11, clauses (b) and (c), of Order VII,

2) rule 3 of Order X;

3) rule 2 of Order XVI;

4) rules 5,6,8,9,10,11,13,14,15 and 16 (so far as relates to the manner of taking evidence) of Order XVIII;

5) rules 1 to 8 of Order XX; and

6) rule 7 of Order XXXIII (so far as relates to the making of a memorandum);

and rule 35 of Order XLI shall not apply to any High Court in the exercise of its appellate jurisdiction.

## **ORDER L**

### **PROVINCIAL SMALL CAUSE COURTS**

1. The provisions hereinafter specified shall not extend to Courts constituted under the Provincial Small Cause Courts Act, 1887, \*\*\* or to Courts exercising the jurisdiction of a Court of Small Causes [under the said Act], that is to say -

a) so much of this schedule as relates to -

i) suit excepted from the cognizance of a Court of Small Causes or the execution of decrees in such suits;

ii) the execution of decrees against immovable property or the interest of a partner in partnership property;

ii) the settlement of issues; and

b) the following rules and Orders, -

Order II, rule 1 (frame of suit);

Order X, rule 3 (record of examination of parties);

Order XV, except so much of rule 4 as provides for the pronouncement at once of judgment ;

Order XVIII, rules 5 to 12 (evidence);

Order XLI to XLV (appeals);

Order XLVII, rules 2,3,5,6,7 (review);

Order LI.

## **ORDER LI**

### **[PRESIDENCY SMALL CAUSE COURTS]**

**Omitted by the A.O., 1949.**

## **ORDER L**

### **PROVINCIAL SMALL CAUSE COURTS**

1. Provincial Small Cause Courts:- The provisions hereinafter specified shall not extend to Courts constituted under the Provincial Small Cause Courts Act, 1887 or to Courts exercising the jurisdiction of a Court of Small Causes under the said Act, that is to say—

(a) so much of this schedule as relates to

(i) suits excepted from the cognizance of a Court of Small Causes or the execution of decrees in such suits;

(ii) the execution of decrees against immovable property or the interest of a partner in partnership property;

(iii) the settlement of issues; and

(b) the following rules and Orders,—

Order II, rule 1 (frame of suit);

Order X, rule 3 (record of examination of parties);

Order XV, except so much of rule 4 as provides for the pronouncement at once of judgment;

Order XVIII, rules 5 to 12 (evidence);

Orders XLI to XLV (appeals);

Order XLVII, rules 2,3,5,6,7 (review);

Order LI.

Leg. Am.: 1. The words and figures "or under the Berar Small Cause Courts Law, 1905" which were ins. by the Berar Laws Act 1941 (4 of 1941), S. 2 and Third Sch. have been omitted by the A.O., 1949.

2. The original words "under that Act" have been successively amended by the Berar Law Act 1941 (4 of 1941) and the A.O., 1949 to read as above.

IHA : K.

Cross Ref.: S. 7; O. 20.4.

## **ORDER LI**

### **PRESIDENCY SMALL CAUSE COURTS**

Leg. Am.: 1. Omitted by the A.O., 1949.

High Court Amendment-Sind. Add the following as Order 52.

## **ORDER LII**

1. Applicability of Rule 38 of Order 41 to proceedings under Section 115. Rule 38 of Order 41 shall apply, so far as may be, to proceedings under Section 115 of the Code.

## **TITLES OF SUITS**

### **APPENDIX A**

#### **PLEADINGS**

(1) Titles of Suits

IN THE COURT OF

A.B. (add description and residence) ... Plaintiff

against

C. D. (add description and residence) ... Defendant

(2) Description of Parties in Particular Cases

Pakistan or the Province of, as the case may be

The Advocate-General of

The Collector of

The State of

The A.B. Company, Limited, having its registered office at

A.B., a public officer of the C.D. Company.

A.B. (add description and residence) on behalf of himself and all other creditors of C.D., late of (add description and residence).

A.B. (add description and residence) on behalf of himself and all other holders of debentures issued by the Company,

Limited

The Official Receiver

A.B., minor (add description and residence), by C.D., (or by the Court of Wards], his next friend.

A.B. (add description and residence) a person of unsound mind (or of weak mind], by

C.D., his next friend

A.B, a firm carrying on business in partnership.

A.B, (add description and residence by his constituted attorney C.D (add description and residence).

A.B, (add description and residence), Shebait Thakar.

## **FORMS OF PLEADINGS**

A B. (add description and residence) executor of C.D. deceased.

A.B. (add description and residence), heir of C.D., deceased.

(3) Plaints

No. 1 MONEY LENT

A.B., the above-named plaintiff, states as follows:-

1. On the \_\_\_\_ day of \_\_\_\_ 19 he lent the defendant rupees repayable on the \_\_\_\_ day of \_\_\_\_.

2. The defendant has not paid the same except \_\_\_\_\_ rupees paid on the \_\_\_\_\_ day of \_\_\_\_19. (If the plaintiff was a minor (or insane) from the \_\_\_\_\_ day of \_\_\_\_\_ till the \_\_\_\_\_ day of \_\_\_\_\_.
3. The plaintiff was a minor (or insane) from the day of\_\_\_\_\_.
4. Facts showing when the cause of action arose and that the court has jurisdiction).
5. The value of the subject matter of the suit for the purpose of jurisdiction is\_\_\_\_\_ rupees.
6. The plaintiff claims\_\_\_\_\_ rupees with interest at \_\_\_\_\_ percent from the \_\_\_\_\_ day of \_\_\_\_19.

## **NO. 2 MONEY OVERPAID**

(Title)

A.B. the above named plaintiff states as follows:-

1. On the\_\_\_\_\_ day of \_\_\_\_\_19 the plaintiff agreed to buy and the defendant to sell\_\_\_\_\_ bars of silver at\_\_\_\_\_ annas per tola of fine silver.
2. The plaintiff procured the said bars to be assayed by E.F., who was paid by the defendant for such assay, and E.F. declared each of the bars to contain 1.500 tolas of fine silver, and the plaintiff accordingly paid the defendant rupees.
3. Each of the said bars contained only 1,200 tolas of fine silver, of which fact the plaintiff was ignorant when he made the payment.
4. The defendant has not repaid the sum so overpaid.

(As in paras, 4 and 5 of Form No. 1, and Relief claimed).

## **NO. 3. GOODS SOLD AT A FIXED PRICE AND DELIVERED**

(Title)

A.B., the above-named plaintiff, states as follows:-

1. On the\_\_\_\_\_ day of \_\_\_\_\_ 13, E.P. sold and delivered to the defendant (one hundred barrels of flour, or the goods mentioned in the schedule hereto annexed or sundry goods).

2. The defendant promised to pay \_\_\_\_ rupees for the said goods on delivery (or on the \_\_\_day of \_\_\_some day before the plaint was filed].

3. He has not paid the same.

4. E.F. died on the \_\_\_\_\_day of 19\_\_\_\_ By his last \_\_\_\_\_will he appointed his brother the plaintiff, his executor.

(As in paras 4 and 5 of Form No. 1]

7. The plaintiff as executor of E.F. claims (Relief claimed].

#### **NO 4 GOODS SOLD AT A REASONABLE PRICE AND DELIVERED**

(Title)

A.B., the above-named plaintiff, states as follows  
:

1. On the \_\_\_\_\_day of \_\_\_\_19, plaintiff sold and delivered to the defendant (sundry articles of house-furniture), but no express agreement was made as to the price.

2 The goods were reasonably worth \_\_\_\_\_ rupees.

3. The defendant has not paid the money.

(As in paras 4 and 5 of Form No. 1 and Relief claimed]

#### **NO. 5 GOODS MADE AT DEFENDANT'S REQUEST, AND NOT ACCEPTED**

(Title)

A B., the above-named plaintiff, states as follows:-

1. On the \_\_\_\_\_ day of 19\_\_\_\_ , E.F. agreed with the plaintiff that the plaintiff should make for him [tables and fifty chairs] and that E.F. should pay for the goods on delivery \_\_\_\_\_ rupees.

2. The plaintiff made the goods, and on the \_\_\_\_\_day of 19\_\_\_\_ , offered to deliver them to E.F., and has ever since been ready and wiling so to do.

3. E.F. has not accepted the goods or paid for them.

(As in paras 4 and 5 of Form No. 1, and Relief claimed]

### **NO. 6 DEFICIENCY UPON A RE-SALE GOODS AT AUCTION**

(Title)

A B , the above-named plaintiff, states as follows

-

1. On the\_\_\_\_ day of\_\_\_\_19\_\_\_\_ , the plaintiff put up at auction sundry (goods], subject to the condition that all goods not paid, for and removed by the purchaser within (ten days) after the sale should be re-sold by auction on his account, of which condition the defendant had notice.

2. The defendant purchased (one crate of crockery] at the auction at the price of\_\_\_\_rupees.

3. The plaintiff was ready and willing to deliver the goods to the defendant on the date of the sale and for (ten days] after.

4. The defendant did not take away the goods purchased by him nor pay for them within (ten days) after the sale, nor afterward.

5. On the \_\_\_\_ day of \_\_\_\_19\_\_, the plaintiff re-sold the crate of crockery, on account of the defendant, by public auction, for\_\_\_\_ rupees.

6. The expenses attendant upon such re-sale amounted to\_\_\_\_ rupees.

7. The defendant has not paid the deficiency thus arising amounting to\_\_\_\_\_

rupees.

(As in paras 4 and 5 of Form No. 1, and Relief claimed).

### **NO. 7 SERVICES AT REASONABLE RATE**

(Title)

A.B. the above named plaintiff, states as follows:-

1. Between the\_\_\_\_ day of\_\_\_\_ 19 and the \_\_\_\_ day of\_\_\_\_ 19, plaintiff (executed sundry drawings, designs and diagrams) for the defendant, at his request but no express agreement was made as to the sum to be paid for such services.

2. The services were reasonably worth rupees.
3. The defendant has not paid the money.

(As in paras 4 and 5 of Form No. 1, and Relief claimed).

NO

#### **. 8. SERVICES AND MATERIALS AT A REASONABLE COST**

(Title)

A B., the above-named plaintiff, states as follows:-

1. On the \_\_\_\_ day of \_\_\_\_ 19 at the plaintiff built a house [known as No. in ], and

furnished, the materials therefore, for the defendant at his request, but no express agreement was made as to the amount to be paid for such work and materials.

2. The work done and materials, supplied were reasonably worth \_\_\_\_ rupees.
3. The defendant has not paid the money.

(As in paras 4 and 5 Form No. 1)

#### **NO. 9. USE AND OCCUPATION**

(Title)

A.B., the above-named plaintiff, executor of the will of X. Y. deceased, states as follows:

1. That the defendant occupied the [House No, \_\_\_\_ Street\_\_\_\_, by permission of the said X.Y. from the day 19, until the \_\_\_\_ day of 19, and no agreement was made as to payment for the use of the said premises.

2. That the use of the said premises for the said period was worth \_\_\_\_ rupees.
3. The defendant has not paid the money.

(As in paras 4 & 5 of Form No. 1)

4. The plaintiff as executor of Y. X. claims (Relief claimed).

#### NO. 10 ON AN AWARD

(Title)

A. B. the above-named plaintiff states as follows:-

1. On the \_\_\_\_ day of 19, the plaintiff and defendant having a difference between them concerning [a demand of the plaintiff for the price of ten barrels of oil which the defendant refused to pay) agreed in writing to submit the difference to the arbitration of £ F. 3rd Gd!. and the originals document is annexed hereto.

2. On the \_\_\_\_ day of \_\_\_\_ 19 the arbitrators awarded that the defendant should (pay the plaintiff \_\_\_\_ rupees).

3. The defendant has not paid the money.

[As in para 4 and 5 of Form No. 1 and relief claimed)

#### NO. 11 ON A FOREIGN JUDGMENT

(Title)

A. B. the above-named plaintiff states as follows:-

1. On the \_\_\_\_ day of \_\_\_\_ 19, at \_\_\_\_ in the State [or Kingdom) of \_\_\_\_ the Court of that State [Kingdom], in a Suit therein pending between the defendant, duly adjudged that the defendant should pay to the plaintiff \_\_\_\_ rupees, with interest from the said date.

2. The defendant has not paid the money.

[As in paras 4 and 5 of Form No 1, and Relief claimed]

#### NO. 12 AGAINST SURETY FOR PAYMENT OF RENT

(title)

A. B. the above-named plaintiff states as follows:-

1. On the \_\_\_\_ day of \_\_\_\_ 19 E. F. hired from the plaintiff for the term of \_\_\_\_ years, the (House No. \_\_\_\_ Street \_\_\_\_ ) at the annual rent of \_\_\_\_ rupees, payable (monthly).

2. The defendant agreed, in consideration of the letting of the premises to E.F. to guarantee the punctual payment of the rent.

3. The rent for the month of \_\_\_\_ 19, amounting to rupees, has not been paid.

(If, by the terms of the agreement, notice is required to be given to the surety, add:-

4. On the \_\_\_\_ day of \_\_\_\_ 19 the plaintiff gave notice to the defendant of the non-payment of the rent and demanded payment thereof.

5. The defendant has not paid the same.

(As in paras 4 & 5 of Form No. 1 and Relief claimed)

#### NO. 13 BREACH OF AGREEMENT TO PURCHASE LAND

A. B. the above named plaintiff states as follows:-

1. On the \_\_\_\_ day of \_\_\_\_ 19, the plaintiff and defendant entered into agreement and the original document is hereto annexed.

(or, on the \_\_\_\_ day of \_\_\_\_ 19, The plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant and that the defendant should purchase from the plaintiff forty bighas of land in the village of \_\_\_\_ for \_\_\_\_ rupees).

2. On the \_\_\_\_ day of 19, the plaintiff, being then the absolute owner of the property (and the same being free from encumbrances as was made to appear to the defendant), tendered to the defendant a sufficient instrument, of transfer of the same (or, was ready and willing, and is still ready and willing, and offered to transfer the same to the defendant by sufficient instrument on the payment by the defendant of the sum agreed upon.

3. The defendant has not paid the money.

(As in paras 4 and 5 of Form No. 1 and relief claimed).

#### NO. 14 NOT DELIVERING GOODS SOLD

A. B. the above-named plaintiff, states as follows:-

1. On the \_\_\_\_ day of 19, at \_\_\_\_ the plaintiff and defendant mutually agreed that the defendant should deliver [one hundred barrels of flour] to the plaintiff on the \_\_\_\_ day of 19 and that the plaintiff should pay therefore \_\_\_\_ rupees on delivery.

2. On the (said) day the plaintiff was ready and willing, and offered to pay the defendant the said sum upon delivery of the goods.

3. The defendant has not delivered the goods and the plaintiff has been deprived of the profits which would have accrued to him, from such delivery.

(As in paras 4 and 5 of Form No. 1, and Relief claimed)

#### NO. 15 WRONGFUL DISMISSAL

(Title)

A.B., the above-named plaintiff, states as follows

:-

1. On the \_\_\_\_ day of \_\_\_\_ 19, the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as [an accountant or in the capacity of foreman, or as the case may be) and that the defendant should employ the plaintiff as such for the term of [one year] and pay him for his service \_\_\_\_\_ rupees (monthly).

2. On the \_\_\_\_ day of \_\_\_\_ 19, the plaintiff entered upon the service of the defendant and has ever since been, and still is, ready and willing to continue in such service during the remainder of the said year whereof the defendant always has had notice.

3. On the \_\_\_\_ day of 19 , the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid or to pay him for his services.

(As in paras 4 & 5 of Form No. 1 and relief claimed).

#### NO. 16. BREACH OF CONTRACT TO SERVE

(Title)

A. B. the above-named plaintiff states as follows:-

On the \_\_\_\_ day of 19 , the plaintiff and defendant mutually agreed that the plaintiff should employ the defendant at an annual salary of \_\_\_\_\_ rupees, and that the defendant should serve the plaintiff as An artist for the term of (one year). I

2. The plaintiff has always been ready and willing to perform his part of the agreement (and on the \_\_\_\_ day of \_\_\_\_ 19 offered so to do).

3. The defendant [entered upon] the service of the plaintiff on the above mentioned day, but afterwards on the \_\_\_\_\_ day of 19 , he refused to serve the plaintiff as aforesaid.

(As in paras 4 & 5 of Form No. 1 and Relief claimed)

#### NO. 17. AGAINST A BUILDER FOR DEFECTIVE WORKMANSHIP

(Title)

A.B., the above-named plaintiff. states as follows:-

1. On the \_\_\_\_\_ day of \_\_\_\_ 19 , the plaintiff and defendant entered into an agreement, and, the original document is hereto annexed. [or state the tenor of the contract].

2. The plaintiff duly performed all the conditions of the agreement on his part.

3. The defendant built the house referred to in the agreement in a bad and unworkman like manner.

(As in paras 4 & 5 of Form NO. 1 and relief claimed)

#### NO.18 ON A BOND FOR THE FIDELITY OF A CLERK

(Title)

A.B, the above-named plaintiff, states as follows:-

1. On the \_\_\_\_\_ day of \_\_\_\_ 19 , the plaintiff took E.F. into his employment as a clerk

2. In consideration thereof, on the day of \_\_\_\_\_ 19, the defendant agreed with the plaintiff that if E.F. should fail to account to the plaintiff for all monies, evidences of debt or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever loss he might sustain reason thereof, not exceeding \_\_\_\_ rupees.

(Or 2. In consideration thereof, the defendant by his bond of the same date bound himself to pay the plaintiff the penal sum of \_\_\_\_\_ rupees, subject to the condition that if E.F. should faithfully perform his duties of clerk and cashier the plaintiff and should justly account to the plaintiff for all monies, evidences of debt or other property which should be at any time held by him in trust, for the plaintiff the bond should be void].

(Or 2. In consideration thereof on the same date the defendant executed a bond in favour of the plaintiff and the original document is hereto annexed).

3. Between the day of 19, and the \_\_\_ day of \_\_\_ 19, E.F. received money and other property, amounting to the value of \_\_\_ rupees, for the use of the plaintiff for which sum he has not accounted to him, and the same still remains due and unpaid.

(As in paras 4 & 5 of Form No. 1 and Relief claimed)

NO. 19. BY TENANT AGAINST LANDLORD WITH SPECIAL DAMAGE

(Title)

A. B. the above-named plaintiff, states as follows:-

1. On the \_\_\_ day of \_\_\_ 19, the defendant by a registered instrument, let to the plaintiff the house No. \_\_\_ Street \_\_\_ for the term of \_\_\_ years, constructing with the plaintiff that he, the plaintiff, and his legal representatives should quietly enjoy possession thereof for the said term.

2. All conditions were fulfilled and all things happened necessary to entitle plaintiff to maintain this suit.

3. On the \_\_\_ day of \_\_\_ 19, during the said term, E. F., who was the lawful owner of the said house, lawfully evicted the plaintiff there from and still withholds the possession thereof from him.

4. The plaintiff was thereby [prevented from continuing the business of a tailor at the said place and was compelled to expend \_\_\_ rupees in moving, and lost the custom of G.H and I. J. by such removal].

(As in paras 4 & 5 of Form No. 1 and Relief claimed)

NO. 20 ON AN AGREEMENT OF INDEMNITY

(Title)

A. B, the above-named plaintiff states as follows:-

1. On the \_\_\_ day of \_\_\_ 19, the plaintiff and defendant, being partners in trade under the style of A.B and C. D, dissolved the partnership, and mutually agreed that the defendant should take and keep all the partnership property, pay all debts of the firm and Indemnify the plaintiff against all claims that might be upon him on account of any indebtedness of the firm

2. The plaintiff duly performed all the conditions of the agreement on his part.

3. On the \_\_\_ day of \_\_\_ 19 , (a Judgment was recovered against the plaintiff and defendant by E. F. in the High Court of Judicature at \_\_\_ upon a debt due from the firm to E.F. and on the day of \_\_\_\_, the plaintiff paid \_\_\_ rupees (in satisfaction of the same)].

4. The defendant has not paid the same to the plaintiff.

(As in paras 4 & 5 of Form No. 1 and Relief claimed)

#### NO. 21. PROCURING PROPERTY BY FRAUD

(Title)

A. B., the above-named plaintiff, states as follows:-

1. On the \_\_\_ day of \_\_\_ 19, the defendant, for the purpose of inducing the plaintiff to sell him certain goods represented to the plaintiff that (he, the defendant, was solvent, and worth \_\_\_ rupees over all his liabilities).

2. The plaintiff was thereby induced to sell (and deliver] to the defendant (dry goods) of value of \_\_\_ rupees.

3. The said representations were false (or state the particular falsehoods and were then known by the defendant to be so.

4. The has not paid for the goods (or, if the goods were not delivered). The plaintiff, in preparing and shipping the goods and procuring their restoration, expended \_\_\_ rupees.

(As in paras 4 & 5 of Form No. 1 and Relief claimed)

#### NO. 22. FRAUDULENTLY PROCURING CREDIT TO BE GIVEN

TO ANOTHER PERSON

(Title)

A.B, the above-named plaintiff, states as follows:-

1. On the \_\_\_ day of \_\_\_ 19 , the defendant represented to the plaintiff that E.F, was solvent and in good credit, and worth rupees over all his liabilities [or that E. F., then held a responsible situation and was in good circumstances, might safely be trusted with goods on credit].

2. The plaintiff was thereby induced to sell to E.F. (rice] of the value of \_\_\_rupees (on \_\_\_months credit].

3. The said representations were false and were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff deceive and injure the plaintiff.

4. E. F (did not pay for the said goods at the expiration of the period aforesaid, or] has not paid for the said rice; and the plaintiff has wholly lost the same.

(As in paras 4 & 5 of Form No. 1 and Relief claimed)

#### NO. 23. POLLUTING THE WATER UNDER THE PLAINTIFF'S LAND

(Title)

A.B., the above named plaintiff, states as follows:-

1. The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain land called \_\_\_\_\_and situate in \_\_\_\_\_ and of well therein and of water in the well, and was entitled to the use and benefit of the well and of the water therein, and to have certain springs and streams of water which flowed and ran into the well to supply the same to flow or run without being fouled or polluted.

2. On the \_\_\_ day of \_\_19, the defendant wrongfully fouled and polluted the well and the water therein and the springs and streams of water which flowed into the well.

3. In consequence the water in the well became impure and unfit for domestic and other necessary purposes and the plaintiff and his family are deprived of the use and benefit of the well and water.

(As in paras 4 & 5 of Form No. 1 and Relief claimed)

#### NO. 24 CARRYING ON A NOXIOUS MANUFACTURE.

(Title)

A. B. the above-named plaintiff, states as follows:-

1. The plaintiff is and at all the times hereinafter mentioned was possessed of certain lands called \_\_\_\_\_ situated in \_\_\_\_\_

2. Ever since the day 19 , the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large

quantities of offensive and unwholesome smoke and other vapors and noxious matter, which spread over and upon the said lands and corrupted and settled on the surface of the lands.

3. Thereby the trees, hedges, herbage and crops of the plaintiff growing on the lands were damaged and deteriorated. In value, and the cattle and live stock of the plaintiff on the lands became unhealthy, and many of them were poisoned and died.

4. The plaintiff was unable to graze the lands with cattle and sheep as he otherwise might have done, and was obliged to remove his cattle, sheep and farming stock there from, and has been prevented from having so beneficial and healthy a use and occupation of the lands as he otherwise would have had.

(As in paras 4 and 5 of Form No. 1 and Relief claimed)

#### NO. 25. OBSTRUCTING A RIGHT OF WAY

(Title)

A.B. the above-named plaintiff, states as follows:-

1. The plaintiff is, and at the time hereinafter mentioned was possessed of a house in the village of\_\_\_\_\_.

2. He was entitled to a right of way from the house over a certain field to a public highway and back again from the highway over the field to the house for himself and his servants (with vehicles, or on foot] at all times of the year.

3. On the \_\_\_\_ day of 19 defendant wrongfully obstructed the said way, so that plaintiff could not pass with vehicles, or on foot or in any manner along the way (and has ever since wrongfully obstructed the same.

4. (State special damage, if any)

(As in paras 4 and 5 of Form No. 1 and Relief claimed)

#### NO. 26. OBSTRUCTING A HIGHWAY

(Title)

1. The defendant wrongfully dug a trench and heaped up earth and stones in the public highway leading from\_\_\_\_\_ to\_\_\_\_\_ so as to obstruct it.

2. Thereby the plaintiff, while lawfully passing along the said highway, fell over the said earth and stones (or into the said trench) and broke his arm, and suffered great pain, and was prevented from attending to his business for a long time, and incurred expense for medical attendance.

(As in paras 4 and 5 of Form No. 1 and Relief claimed)

#### NO 27. DIVERTING A WATER-COURSE

(Title)

A. B. the above-named plaintiffs states as follows:-

1. The plaintiff is, and at the time hereinafter mentioned was, possessed of mill situated on a (stream] known as the \_\_\_\_\_ in the village of \_\_\_\_\_ district of \_\_\_\_\_.

2. By reason of such possession the plaintiff was entitled to the flow of the stream for working the mill.

3. On the \_\_\_ day of \_\_\_ 19, the defendant, by cutting the bank of the stream, wrongfully diverted the water thereof so that less water ran into the plaintiff's mill.

4. By reason thereof the plaintiff has been unable to grind more than sacks per day, whereas, before the said diversion of water, he was able to grind \_\_\_ sacks per.

(As in paras 4 and 5 of Form No. 1 and Relief claimed)

#### NO. 28. OBSTRUCTING A RIGHT TO USE WATER IRRIGATION

(Title)

A. B., the above-named plaintiff, states as follows:-

1. Plaintiff is and was at the time hereinafter mentioned., possessed of certain lands situate, etc. and entitled to take and use a portion of the water of a certain stream for irrigating the said lands.

2. On the \_\_\_\_\_ day \_\_\_\_\_ 19 ,defendant prevented the plaintiff from taking and using the portion of the said water as aforesaid by wrongfully obstructing and diverting the said stream.

(As in paras 4 and 5 of Form No. 1 and Relief claimed)

#### NO. 29. INJURIES CAUSED BY NEGLIGENCE ON A RAILROAD

(Title)

A. B. the above named plaintiff states as follows:-

1. On the \_\_\_\_ day of \_\_\_\_ 19, the defendants were common carriers of passengers by railway between \_\_\_\_ and \_\_\_\_.

2. On that day the plaintiff was a passenger in one of carriages of the defendants on the said railway.

3. While he was such passenger, at \_\_\_\_ or near the station of \_\_\_\_ or between the stations of \_\_\_\_ and \_\_\_\_ a collusion occurred on the said railway caused by the negligence and unskill-fullness of the defendant's servants, whereby the plaintiff was much injured (having leg, broken, his head cut, etc. and state the special damage, if any as) and incurred expense for medical attendance, and is permanently disabled from carrying on his former business as a salesman.

(As in paras 4 and 5 of Form No. 1 and Relief claimed)

Or thus:-2. On that day the defendants by their servants so negligently and unskillfully drove and managed an engine and a train of carriages attached thereto upon and along the defendant's railway which the plaintiff was then lawfully crossing, that the said engine and train were driven and struck against the plaintiff, whereby, etc., as in para 3).

NO. 30. INJURIES CAUSED BY NEGLIGENT DRIVING

(Title)

A. B. above-named plaintiff, states as follows:-

1. The plaintiff is a shoe-maker, carrying on business at \_\_\_\_ . The defendant is a merchant of \_\_\_\_ .

On the \_\_\_\_ day of \_\_\_\_ 19 , the plaintiff was walking (westward) along (Bunder Road), in the city of Karachi at above 3 O'clock in the afternoon. He was obliged to cross Wood Street, which is a Street running into Bunder Road at right angles. While he was crossing this street, and just before he could reach the foot-pavement on the further side thereof, a carriage of the defendant's servants, was drawn by two horses under the charge and control of the defendant's servants, was negligently, suddenly and without any warning turned at a rapid and dangerous pace out of Wood Street into Bunder Road. The pole of the carriage struck the plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and fall and trampling the plaintiff's left arm was broken and he was bruised and injured on the side and back, as

well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

(As in paras 4 and 5 of Form No. 1 and Relief claimed)

#### NO. 31 FOR MALICIOUS PROSECUTION

(Title)

A.B., the above-named plaintiff, states as follows:-

1. On the \_\_\_\_\_ day of \_\_\_\_\_ 19, the defendant obtained a warrant of arrest from (((((( a Magistrate of the said city or as the case may be) on a charge of \_\_\_\_\_ and the plaintiff was arrested thereon and imprisoned for \_\_\_\_\_ days or hours and gave bail in the sum of \_\_\_\_\_ rupees to obtain his release).

2. In so doing the defendant acted maliciously and without reasonable or probable cause.

3. On the \_\_\_\_\_ day of \_\_\_\_\_ 19 the Magistrate dismissed the complaint of the defendant and acquitted the plaintiff.

4. Many persons, whose names are unknown to the plaintiff, hearing of the arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him; or in consequence of the said arrest, the plaintiff lost his situation as clerk to one E. F. or in consequence, the plaintiff suffered pain of body and mind, and was prevented from transacting his business, and was injured in his credit and incurred expense in obtaining his release from the said imprisonment and in defending himself against the said complaint.

(As in paras 4 and 5 of Form No. 1 and Relief claimed)

#### NO. 32 MOVABLES WRONGFULLY DETAINED

(Title)

A. B. the above-named plaintiff, states as follows:-

1. On the \_\_\_\_\_ day of \_\_\_\_\_ 19, plaintiff owned (or state facts showing a right to the possession) the goods mentioned in the schedule hereto annexed (describe the goods) the estimated value of which is \_\_\_\_\_ rupees.

2. From that day until the commencement of this suit the defendant has detained the same from the plaintiff.

3. Before the commencement of the suit, to wit, on the \_\_\_\_ day of \_\_\_\_ 19, the plaintiff demanded the same from the defendant but he refused to deliver them.

(As in paras 4 and 5 of Form No. 1 and Relief claimed)

6. The plaintiff claims-

(1) delivery of the said goods, or \_\_\_\_ rupees, in case delivery cannot be had;

(2) rupees compensation for the detention thereof.

\_\_\_\_\_

The Schedule

\_\_\_\_\_

NO. 33 AGAINST A FRAUDULENT PURCHASER AND HIS TRANSFEREE

WITH NOTICE

(Title)

A. B. the above-named plaintiff, states as follows:-

1. On the \_\_\_\_ day of \_\_\_\_ 19, the defendant C.D. for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that was solvent, and worth rupees over all his liabilities).

2. The plaintiff was thereby induced to sell and deliver to C. D. (one hundred boxes of tea) the estimated value of which is \_\_\_\_ rupees.

3. The said representations were false, and were then known by C.D. to be so (or at the time of making the said representations. C.D. was insolvent, and knew himself to be so].

4. C.D. afterwards transferred the said goods to the defendant E. F. without consideration who had notice of the falsity of the representation].

(As in paras 4 and 5 of Form No. 1 and Relief claimed)

7. The plaintiff claims:-

(1) delivery of the said goods, or \_\_\_\_\_ rupees in case delivery cannot be had;

(2) rupees compensation the detention thereof

NO. 34 RESCISSION OF A CONTRACT ON THE GROUND OF MISTAKE

(Title)

A.B, the above-named plaintiff, states as follows:-

1. On the day of \_\_\_\_\_ 19, the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant, situated at \_\_\_\_\_ contained (ten bighas].

2. The plaintiff' was thereby induced to purchase the same at the price of \_\_\_\_\_ rupees in the belief that the said representation was true, and signed an agreement of which the original is hereto annexed but the land, has not been transferred to him.

3. On the \_\_\_\_\_ day of \_\_\_\_\_ 19, the plaintiff paid the \_\_\_\_\_ rupees as part of the purchase-money.

4. That the said piece of ground contained in fact only (five bighas].

(As in paras 4 and 5 of Form No. 1 and Relief claimed)

The plaintiff claims:-

(1) \_\_\_\_\_ rupees with interest from the \_\_\_\_\_ day of \_\_\_\_\_ 19,

(2) that the said agreement be delivered up and cancelled.

NO. 35 AN INJUNCTION RESTRAINING WASTE

(Title)

A.B. the above named plaintiff, states as follows:-

1. The plaintiff is the absolute owner of \_\_\_\_\_ (describe the property).

2. The defendant is in possession of the same under a lease from the plaintiff.

3. The defendant has (cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale) without the consent of the plaintiff.

(As in paras 4 and 5 of Form No. 1 and Relief claimed)

6. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

(As in paras 4 and 5 of Form No. 1 and Relief claimed)

#### NO. 36. INJUNCTION RESTRAINING NUISANCE

(Title)

A.B., the above named plaintiff, states as follows:-

1. Plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of the house No. \_\_\_\_\_ Street \_\_\_\_\_ Karachi.

2. The defendant is and at all the said times was the absolute owner of a plot of ground in the same street \_\_\_\_\_.

3. On the \_\_\_\_ day 19, the defendant erected upon his said plot a slaughter-house and still maintains the same and from that day until the present time has continually caused cattle to be brought and' killed there (and has caused the blood and offal to be thrown into the Street opposite the said house of the plaintiff.

4. In consequence the plaintiff has been compelled to abandon the, said house and has been unable to send the same.

(As in paras 4 and 5 of Form No. 1 and Relief claimed)

7. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further nuisance.

#### NO. 37 PUBLIC NUISANCE

(Title)

A. B. the above-named plaintiff states as follows:

1. The defendant has wrongly heaped up earth and stones on a public road known as \_\_\_\_\_ street at \_\_\_\_\_ so as to obstruct the passage

of the public along the same and threatens and intends, unless restrained from so doing, to continue and repeat the said wrongful act.

2. The plaintiff has obtained the consent in writing of: the Advocate-General (or other officer appointed in this behalf] to the Institution of the suit.

(As in paras 4 and 5 of Form No. 1 and Relief claimed)

5. The plaintiff claims-

(1) a declaration, that the defendant is not entitled to obstruct the passage of the public along the said public road.

(2) an injunction restraining the defendant from obstructing the passage of the public along the said public road and directing the defendant to remove the earth and stones wrongfully heaped up as aforesaid.

NO. 38 INJUNCTION AGAINST THE DIVERSION OF WATER.COURSE

(Title)

A.B. the above-named plaintiff, states as follows:-

[As in Form No. 27)

The plaintiff claims that the defendant be restrained by injunction from diverting the water as aforesaid.

NO. 39. RESTORATION OF MOVABLE PROPERTY THREATENED WITH DESTRUCTION AND FOR AN INJUNCTION

(Title)

A.B. the above-named plaintiff, states as follows -

1. Plaintiff is and at all, times hereinafter, mentioned was, the owner of (a portrait of his grand-father which was executed by an eminent painter) which duplicate exists (or state any facts showing that the property is of a kind that cannot be replaced by money).

2. On the\_\_\_\_day of \_\_\_\_19 he deposited the same for safe-keeping with

the defendant.

3. On the \_\_\_\_ day of - \_\_\_\_ 19, he demanded the same from the defendant and offered to pay all reasonable charges for the storage of the same.

4. The defendant refuses to deliver the same to the plaintiff and threatens to conceal, dispose of, cut or injure the same if required to deliver it up.

5. No pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the (painting).

(As in paras 4 and 5 of Form No. 1 and Relief claimed)

8. The plaintiff claims-

(1) that the defendant be restrained by injunction from disposing of, injuring or concealing the said (painting);

(2) that he be compelled to deliver the same to the plaintiff.

NO. 40. INTERPLEADER

(Title)

A.B., the above-named plaintiff states as follows:-

1. Before the date of the claims hereinafter mentioned G. H. the plaintiff (describe the property) for safe keeping.

2. The defendant C. D. claims the same (under an alleged assignment thereof to him from G.H).

3. The defendant E. F. also claims the same (under an order of G. H. transferring the same to him).

4. The plaintiff is ignorant of the respective rights of the defendants.

5. He has no claim upon the said property other than for charges and costs, and is ready and willing to deliver it to such persons as the Court shall direct.

6. The suit is brought by collusion with either of the defendants.

(As in paras 4 and 5 of Form No. 1)

9. The plaintiff claims:-

(1) that the defendants be restrained, by injunction, from taking any proceedings against the plaintiff In relation thereto;

(2) that they be required to Interplead together concerning their claims to the

said property;

(3) that some person be authorized to receive the said property pending such litigation.

(4) that upon delivering the same to such (person] the plaintiff be discharged from all liability to either of the defendants In relation thereto.

NO. 41 ADMINISTRATION BY CREDITOR ON BEHALF OF HIMSELF AND

ALL OTHERS

(Title)

A. B. the above-named plaintiff, states as follows:-

1. E. F. late of \_\_\_\_\_ was at the time of his death, and his estate still is indebted to the plaintiff in the sum of \_\_\_\_\_(here insert nature of debt and security, if any).

2. E. F. died on or about the \_\_\_\_\_day of \_\_\_\_\_by his last will \_\_\_\_\_dated the \_\_\_\_\_day of he appointed C. D. his executor (or devised his estate in trust etc. or died intestate, as the case may be].

3. The will was proved by C. D. (or letters of administration were granted etc].

4. The defendant has possessed himself of the movable (and immovable, or the proceeds of the immovable property of E. F. and has not paid the plaintiff his debt.

(As in paras 4 and 5 of Form No. 1)

7. The plaintiff claims that an account may be taken of the movable [and immovable) property of E.F. deceased and that the same may be administered under the decree of the court).

NO. 42. ADMINISTRATION BY SPECIFIC LEGATES

(Title)

(Alter Form No. 41 thus)

(Omit paragraph 1 and commence paragraph 2) E .F., late of\_\_\_\_ died on or about the\_\_\_\_ day of\_\_\_\_. By his last will, dated, the day of \_\_\_\_ he appointed C. D. his executor, and bequeathed to the plaintiff (here state the specific legacy].

For paragraph 4 substitute;-

The defendant is in possession of the movable property of E.F., and, amongst other things of the said (here name the subject of the specific bequest).

For the commencement of paragraph 7 substitute:-

The plaintiff claims that the defendant may be ordered to deliver to him the said (here name and subject of the specific bequest) or that etc.

NO. 43 ADMINISTRATION BY PECUNIARY LEGATEE

(Title)

(Alter Form No. 41 thus)

(Omit paragraph I and substitute for paragraph 2) E. F. late of\_\_\_\_\_ died on or about the\_\_\_\_ day of\_\_\_\_ he appointed C. D. his executor and bequeathed to the plaintiff a legacy of \_\_\_\_\_rupees.

In paragraph 4 substitute "legacy" for debt.

Another Form

(Title)

E. F. the above named plaintiff, states as follows:-

1. A. B. of K in the \_\_\_\_died on the\_\_\_\_ day of\_\_\_\_  
By his last will, dated the\_\_\_\_ day of\_\_\_\_ he appointed the defendant and M. N. (who died in the testator's lifetime) his executors, and bequeathed his property, whether movable or immovable, to his executors in trust, to pay the rents and income thereof to the plaintiff for his life: and after his decease, and in default of his having a son who should attain twenty one or a daughter who should attain that age or marry, upon trust as to his immovable

property for would be the testator's heir-at-law, and as to his movable property for the persons who would be the testator's next of kin if he had died intestate at the time of the death of the plaintiff, and such failure of his issue as aforesaid.

2. The will was proved by the defendant on the \_\_\_\_ day of \_\_\_\_\_. The plaintiff has not been married.

3. The testator was at his death entitled to movable and immovable property the defendant entered into the receipt of the rents of the immovable property and got in the movable property, he has sold some part of the immovable property.

(As in paras 4 and 5 of Form No. 1)

6. The plaintiff claims:-

(1) to have the movable and immovable property of A. B. administered in this court and for that purpose to have all proper directions given and accounts taken.

(2) Such further or other relief as the nature of the case may require.

#### NO. 44 EXECUTION TRUSTS

(Title)

A. B. the above-mentioned plaintiff, states as follows:-

1. He is one of the trustees under an instrument of settlement bearing date on

or about the \_\_\_\_ day of \_\_\_\_ made upon the marriage of E. F. and G. H., the father and mother of the defendant (or an instrument of transfer of the estate and effects of E. F. for the benefit of C. D. the defendant, and the other creditors of E. F.).

2. A. B. has taken upon himself the burden of the said trust and is in possession of (or of the proceeds of) the movable and immovable property transferred by the said instrument.

3. C. D. claims to be entitled to a beneficial interest under the instrument.

(As in paras 4 and 5 of Form No. 1)

6. The plaintiff is desirous to account for all the rents and profits of the said immovable property (and the Proceeds of the sale of the said or of part of the said, immovable property, or movable or the proceeds of the sale of or of part of, the said movable property, or the profits accruing to the plaintiff as such trustee in the execution of the said trust) and he prays that the Court will take the accounts of the said trust, and also that the whole of the said trust estate may be administered in the Court for he benefit of C.D. , the defendant and all other persons who may be interested in such administration in the presence of C.D. and such other persons so interested as the Court may direct, or that C.D. may show good cause to the contrary.

(N. B. – Where the suit is by a beneficiary, the plaint may be modeled, mutatis

mutandis on the plaint by a legatee) .

NO. 45 FORECLOSURE OR SALE

(Title)

A. B. the above-named plaintiff, states as follows:-

1. The plaintiff is mortgagee of lands belonging to the defendant.

2. The following are the particulars of the mortgage:-

(a) date

(b) names of mortgagor and mortgagee

(c) sum secured

(d) rate of Interest

(e) property subject to mortgage

f) amount now due

(g) if the plaintiff's title is derivative stare shortly the transfers or devolution

which he claims).

(If the plaintiff is mortgagee in possession, add)

3. The plaintiff took possession of the mortgaged property on the \_\_\_\_ day of \_\_\_\_ and is ready to account as mortgagee in possession from that time.

(As in paras 4 and 5 of Form No. 1)

6. The plaintiff claims-

(1) payment or in default (sale or) foreclosure (and possession)

(Where Order 34, rule 6 applies).

2) in case the proceeds of the sale are found to be insufficient to pay the amount due to the plaintiff, then that liberty be reserved to the plaintiff to apply for a decree for the balance.

#### NO. 46. REDEMPTION

(Title)

A. B, the above-named plaintiff, states as follows

-

1. The plaintiff is mortgagor of lands of which the defendant is mortgagee,

2. The following are the particulars of the mortgage:-

(a) (date) ;

(b) names of mortgagor and mortgagee)

(c) (sum secured)

(d) (rate of interest)

(e) (property subject to mortgage)

(f) (If the plaintiff's title is derivative, state shortly the transfers or devolution

under which he claims).

(If the defendant is mortgagee in possession, add)

3. The defendant has taken possession (or has received the rents) of the mortgaged property.

(As in paras 4 and 5 of Form No. 1)

6. The plaintiff claims to redeem the said property and to have the sari re-conveyed to him and to have possession thereof].

NO. 47. SPECIFIC PERFORMANCE (NO. 1)

(Title)

A.B., the above named plaintiff, states as follows:-

1. By an agreement dated the \_\_\_\_ day of \_\_\_\_ and signed by the defendant, he contracted to buy of (or sell to) the plaintiff certain immovable property therein described and referred to sum of \_\_\_\_\_ rupees.
2. The plaintiff has applied to the defendant specifically to perform the agreement on his part, but the defendant has not done so.
3. The plaintiff has been and still is ready and, willing specifically to perform the agreement on his part of which the defendant has had not.

(As in paras 4 and 5 of Form No. 1)

6.: The plaintiff claims that the Court will order, the defendant specifically to perform the agreement and to do all acts necessary to put the plaintiff in full possession of the said property to accept a transfer and possession of the said property] and to pay the costs of the suit.

NO. 48 SPECIFIC PERFORMANCE

(Title)

A. B., the above-named plaintiff, states as follows:-

1. On the \_\_\_\_ day of \_\_\_\_\_ 19 the plaintiff and defendant entered into an agreement in writing and the original document is hereto annexed.

The defendant was absolutely entitled to the immovable property described in the agreement.

2. On the \_\_\_\_ day of \_\_\_\_ 19 , the plaintiff tendered \_\_\_\_\_ rupees to the defendant, and demanded a transfer of the said property by a sufficient Instrument..
3. On the \_\_\_\_ day \_\_\_\_ 19 the plaintiff again demanded such transfer (or the defendant, refused to transfer the same to the plaintiff.

4. The defendant has not executed any instrument of transfer.

5. The plaintiff is still ready and willing to the purchase-money of the said property to the defendant.

(As in paras 4 and 2 of Form No. 1)

8. The plaintiff claims:-

(1) that the defendant transfer the said property to the plaintiff by a sufficient instrument (following the terms of the agreement].

(2)\_\_\_\_rupees compensation for withholding the same.

NO. 49 PARTNERSHIP

(Title)

A. B. the above-named plaintiff, states as follows

-

1. He and C.D. the defendant have been for \_\_\_\_years [or months] past carrying on business together under articles of partnership in writing (or under a deed, or under a verbal agreement].

2. Several disputes and differences, have arisen between the plaintiff and defendant as such partners whereby it has become impossible to carry on the business in. partnership with advantage to the partners (or the defendant has committed the following breaches of the partnership articles:-

(1)

(2)

(3)

(As in paras 4 and 5 of Form No. 1)

5. The plaintiff claims-.

(1) dissolution of the partnership

(2) that accounts be taken

(3) that a receiver be appointed

(N. B.-In suits for the winding-up of any partnership, omit the claim for dissolution; and instead insert a paragraph stating the facts of the partnership having been dissolved).

#### (4) Written Statements

##### General Defences

Denial-The defendant denies that (set out facts).

The defendant does not admit that (set out facts).

The defendant admits that\_\_\_\_ but says that

Protest.-The defendant denies that he is a partner and the defendant firm of the plaintiff.

The defendant denies that he made the contract alleged or any contract with the plaintiff.

The defendant denies that he contracted with the plaintiff as alleged or at all.

The defendant admits assets but not the plaintiff's claim.

The defendant denies that the plaintiff sold to him the goods mentioned in this plaint or any of them.

Limitation.-The suit is barred by article\_\_\_\_ or article of the Second Schedule to the (Indian Limitation Act, 1877].

Jurisdiction. -The: Court has no jurisdiction to hear the suit on the ground that

(set forth the grounds).

On the day of a diamond ring was delivered by the defendant to and accepted by the plaintiff in discharge of the alleged cause of action.

Insolvency.-The defendant has been adjudged an insolvent.

The plaintiff before the institution of the suit was adjudged an insolvent and the right to sue vested in the receiver.

Minority.-The defendant was a minor at the time of making the alleged contract.

Payment into court.-The defendant as to the whole claim (or as to Rs. ) part of the money claimed, (or as case may be) has paid into court Rs. and says that this sum is enough to satisfy the p claim (or the part aforesaid].

Performance remitted -The performance of the promise alleged was remitted on the \_\_\_\_ (date).

Rescission-The contract was rescinded by agreement between the plaintiff and defendant.

Res Judicata — The plaintiff's claim is barred by the decree in suit (give the reference).

Estoppel.-The plaintiff is estopped from denying the truth of (insert statement as to which estopped is claimed) because (here state the facts relied on as creating the estoppel).

Ground of defence subsequent to institution of suit.-Since the institution of the suit, that is to say, on the day of \_\_\_\_ (set out facts).

#### NO. I DEFENCE IN SUITS FOR GOODS SOLD AND DELIVERED

1. The defendant did not order the goods.
2. The goods were not delivered to the defendant.
3. The price was not Rs. \_\_\_\_\_

or

4. 1.

5 . Except as to Rs. \_\_\_\_\_ same as 2.

6. 3.

7. The defendant (or A.B. the defendant's agent], satisfied the claim by payment before suit to the plaintiff (or to C. D. the plaintiff's agent] on the day of \_\_\_\_19 .

8. The defendant satisfied the claim by payment after suit to the plaintiff on the \_\_\_\_ day of 19\_\_

#### No. 2 DEFENCE IN SUITS IN BONDS

1. The bond is not the defendant's bond.

2. The defendant made payment to the plaintiff on the day according to the condition of the bond.

3. The defendant made payment to the plaintiff after the day named and before suit of the principal and interest mentioned in the bond.

#### No. 3 DEFENCE IN SUITS ON GUARANTEES

1. The principal satisfied the claim by payment before suit.

2. The defendant was released by the plaintiff giving time to the principal debtor in pursuance of a binding agreement.

#### No. 4. DEFENCE IN ANY SUIT FOR DEBT

1. As to Rs. 200 of the money claimed, the defendant is entitled to set off for goods sold and delivered by the defendant to the plaintiff.

Particulars are as follows:-

Rs.

1907, January, 25th ... 150

February, 1st ... 50

\_\_\_\_\_

Total 200

\_\_\_\_\_

2. As to the whole (or as to Rs.\_\_\_\_ part of the money claimed the defendant made tender before suit, of Rs.\_\_\_\_ and has paid the same into Court.

#### No. 5. DEFENCE IN SUITS FOR INJURIES CAUSED BY I4EGL DRIVING

1. The defendant denies that the carriage mentioned in the plaint was the defendant's carriage, and that it was under the charge or control of the defendant's servants. The carriage belonged to\_\_\_\_\_of\_\_\_\_\_.

Street (Karachi) livery stable keepers employed by the defendant to supply him with carriages and horses ; and the person under whose charge and control the said carriage was, was the servant of the said.

2. The defendant does not admit that the said carriage was turned o of (Wood Street) either negligently, suddenly or without warning, or at a rapid or dangerous pace.

3. The defendant says the plaintiff might and could by the exercise of reasonable care and diligence, have seen the said carriage approaching him, and avoided any collision with it.

4. The defendant does not admit the statements contained in the third paragraph of the plaint.

#### No. 6. DEFENCE IN ALL SUITS FOR WRONGS

1. Denial of the several acts [or matters] complained of.

#### No. 7. DEFENCE IN SUITS FOR DETENTION OF GOODS

1. The goods were not the property of the plaintiff.

2. The goods were detained for a lien to which the defendant was entitled.

Particulars are as follows:-

1907, May 3rd. To carriage of the goods claimed from (Lahore) to (Karachi):-

45 maunds at Rs. 2 per maund

#### No. 8 DEFENCE IN SUITS FOR INFRINGE OF COPYRIGHT

1. The plaintiff is not the author (assignee etc.).

2. The book was not registered.

3. The defendant did not infringe.

#### NO. 9. DEFENCE IN SUITS FOR INFRINGEMENT TRADE MARK

1. The trade mark is not the plaintiff's.

2. The alleged trade mark is not a trade mark.

3. The defendant did not infringe.

#### NO. 10. DEFENCES IN SUITS RELATING TO NUISANCES

1. The plaintiff's lights are not ancient [or deny his other alleged prescriptive rights.
2. The plaintiff's lights will not be materially by the defendant's buildings].
3. The defendant denies that he or his servants pollute the water [or do what is complained of].

(if the defendant claims the right by prescription or otherwise to do what is complained of he must say so, and must state the grounds of the claim i.e. whether by prescription, grant or what].

4. The plaintiff has been guilty of laches of which the following are particulars:-

1870. Plaintiff's mill began to work.

1871 Plaintiff came into possession.

1883 First complaint.

5. As to the plaintiff's claim for damages the defendant will rely on the above grounds of defence, and says that the acts complained of have not produced any damage to the plaintiff. [if other grounds are relied on, they must be stated, e.g., limitation as to post damage.].

## NO. II. DEFENCE TO SUIT FOR FORECLOSURE

1. The defendant did not execute the mortgage.
2. The mortgage was not transferred to the plaintiff (if more than one transfer is alleged say which is denied).
3. The suit is barred by article \_\_\_\_\_ of the Second Schedule to the Indian Limitation Act, 1877.

4. The following payments have been made viz.,

Rs.

(Insert late) ... .. 1,000

(insert date) ... .. 500

5. The plaintiff took possession on the of \_\_\_\_\_ of \_\_\_\_\_.

6. That plaintiff released the debt on the\_\_\_\_\_.

7. The defendant transferred all his interest to A.  
B. by a document dated\_\_\_\_\_.

#### NO. 12 DEFENCE TO SUIT FOR REDEMPTION

1. The plaintiff's right to redeem is barred by article\_\_\_\_\_ of the Second Schedule to the Indian Limitation Act, 1877.

2. The plaintiff transferred all interest in the property to A. B.

3. The defendant by a document dated the\_\_\_\_day of transferred all his interest in the mortgaged debt and property comprised in the mortgage to A. B.

4. The defendant never took possession of the mortgaged property or received the rents thereof.

(If the defendant admits possession for a time only, he should state the time and deny possession beyond what he admits).

#### NO. 13 DEFENCE TO SUIT FOR. SPECIFIC PERFORMANCE

1. The defendant did not enter into the agreement.

2. A. B. was not the agent of the defendant (if alleged by plaintiff).

3. The plaintiff has not performed the following conditions-(Conditions)

4. The defendant did not-(alleged acts of part performance).

5. The plaintiff's title to the property agreed to be sold is not such as the defendant is bound to accept by reason of the following matter-(State why).

6. The agreement is uncertain in the following respects-(State them).

7. (or) The plaintiff has been guilty of delay.

8. (or) The plaintiff has been guilty of fraud (or misrepresentation).

9. (or) The agreement is unfair.

10. (or) The agreement was entered into by mistake.

11. The following are particulars of (7), (8), (9), (10), (or as the case may be).

12. The agreement was rescinded under conditions of Sale No. II (or by mutual agreement).

(in cases where damages are claimed and the defendant disputes his liability to damages he must deny the agreement or the alleged breaches, or show whatever other ground of defence he intends to rely on e.g.. the Indian Limitation Act, accord and satisfaction, release, fraud, etc.)

#### NO. 14 DEFENCE IN ADMINISTRATION SUIT BY PECUNIARY LEGATEE

1. A. B. will contained a charge of debts he died insolvent: he was entitled at his death to some immovable property which the defendant sold and which produced the net sum of Rs.\_\_\_\_ and the testator had some movable property which the defendant got in, and which produced the net sum of Rs.\_\_\_\_.

2. The defendant applied the whole of the said sums and the sum of Rs.\_\_\_\_ which the defendant received from rents of the immovable property in the payment of the funeral and testamentary expenses and some of the debts of the testator.

3. The defendant made up his accounts and sent a copy thereof to the plaintiff on the

day of\_\_\_\_19 , and offered the plaintiff free access to the vouchers to verify such accounts but he declined to avail himself of the defendant's offer.

4. The defendant submits that the plaintiff ought to pay the costs of this Suit.

#### NO. 15 PROBATE OF WILL IN SOLEMN FORM

1. The said will and codicil of the deceased were not duly executed according to the provisions of the Indian Succession Act, 1865 [or of the Hindu Wills Act, 1870].

2. The deceased at the time the said will and codicil respectively purport to have been executed, was not of sound mind, memory and understanding

3. The execution of the said will and codicil was obtained by the fraud of the plaintiff (and others acting with him whose names are at present unknown to the defendant].

4. The execution of the said will and codicil was obtained by the fraud of the plaintiff, such fraud, so far as is within the defendant present knowledge, being (state the nature of the fraud].

5. The deceased at the time of the execution of the said will (or of the contents of the residuary clauses in the said will as the case may be).

6. The deceased made his true will, dated the 1st January 1873 there by appointed the defendant sole executor thereof.

The defendant claim:-

(1) that the court will pronounce against the said, will, and codicil propounded by the plaintiff.

(2) that the court will decree probate of the will of the deceased dated the 1st January, 1873, in solemn form of law.

NO. 16. PARTICULARS

(Title of suit)

Particulars -The following are the particulars of (here state the matters in respect of which particulars have been ordered) delivered pursuant to the order of the\_\_\_\_of\_\_\_\_\_.

(here set out the particulars ordered in paragraphs if necessary)

APPENDIX B

PROCESS

NO. I. SUMMONS FOR DISPOSAL OF SUIT,

(Title)

To

Name, description and place of residence

WHEREAS

has instituted a suit against you for\_\_\_\_\_you are hereby summoned to appear in this court in person or by a pleader duly instructed, and able to answer all material questions relating to the suit, or who shall

be accompanied by some person able to answer all such questions, on the day of \_\_\_19 , at\_\_\_

O'clock in the noon, to answer the claim and as the day fixed for your appearance is appointed for the final, disposal of the suit, you must be prepared to produce on that day all the witnesses upon whose evidence and all the documents upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned the suit will be heard and determined in your absence.

Given under my hand and the seal of the Court, this \_\_\_day of \_\_\_19

Judge

NOTICE: Should you apprehend your witnesses will not attend of their own accord, you can have a summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call upon the witness to produce, on applying to the Court and on depositing the necessary expenses.

2. If you admit the claim, you should pay the money into Court together with the costs of the suit to avoid execution of the decree, which may be against your person or property or both.

S1ND. Insert the following note in red ink in forms 1, 2, 3, 5 and 6:-

Also take notice that in default of your filling an address for service on or before the date mentioned you are liable to have your defence struck out.

NO. 2. SUMMONS FOR SETTLEMENT OF ISSUES

(Title)

To

(Name, description and place of residence)

WHEREAS

Has instituted a suit against you for\_\_\_\_\_ you are hereby summoned to appear in this court in person, or by a pleader duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some person able to answer all such questions, on the day of \_\_\_19 , at\_\_\_O'

clock in the noon, to answer the claim; and you are directed to produce on that day all the documents upon which you intend to rely in support of your defence to file on or before that date your written statement.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this\_\_\_\_  
day\_\_\_of\_\_\_19

Judge

NOTICE: Should you apprehend your witnesses will not attend of their own accord, you can have a summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call upon the witness to produce, on applying to the Court and on depositing the necessary expenses.

2. If you admit the claim, you should pay the money into Court together with the costs of the suit, to avoid execution of the decree, which may be against your person or property, or both.

SIND See the Local Amendment of Sind for Form No I  
Appendix B

NO. 3 SUMMONS TO APPEAR IN PERSON

(Name, description and place of residence)

To

WHEREAS

Has instituted a suit against you for\_\_\_\_ you are hereby summoned to appear in this court in person on the \_\_\_\_ day of \_\_\_\_ 19 at\_\_\_\_ O'clock in \_\_\_\_ noon to answer the claim and you are directed to produce on that day all the documents upon which you intend to rely in support of your defence.

GIVEN under my hand and the seal of the court this  
day of \_\_\_\_ 19

SIND See the Local Amendment of Sind for Form NO. 1  
Appendix B.

NO. 4 SUMMON IN SUMMARY SUIT ON NEGOTIABLE INSTRUMENT

(Title)

To,

(Name, description and place of residence)

WHEREAS \_\_\_\_\_ has institute a suit against you under Order XXXVII of the Code of Civil Procedure, 1908, for Rs. \_\_\_\_\_ balance of principal and interest due to him as the \_\_\_\_\_ of a \_\_\_\_\_ of which a copy is hereto annexed, you are hereby summoned to obtain leave from the Court within ten days from the service hereof to, appear, and defend the suit, and within such time to cause an appearance to be entered for you. In default whereof the plaintiff will be entitled at any time after the expiration of such ten days to obtain a decree for any sum not exceeding the sum of Rs. \_\_\_\_\_ and the sum of Rs. \_\_\_\_\_

for costs with such interest, if any, from the date of the institution of the suit as the Court may order].

Leave to appear may be obtained on an application to the Court supported by affidavit or declaration showing that there is a defence to the suit on the merits; or that it is reasonable that you should be allowed to appear in the suit.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19

Judge

NO. 5. NOTICE TO PERSON WHO, THE COURT CONSIDERS, SHOULD BE ADDED AS CO-PLAINTIFF.

(Title)

To

(Name, description and place of residence)

WHEREAS \_\_\_\_\_ has instituted the above suit against \_\_\_\_\_ for \_\_\_\_\_ and whereas it appears necessary that you should be added as a plaintiff in the said suit in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved:

Take notice that you should on or before the \_\_\_\_\_ day of \_\_\_\_\_ 19, signify to this Court whether you consent to be so added.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_.

Judge

SIND. The Local Amendment of Sind for Form No. I, Appendix B.

NO. 6. SUMMONS TO LEGAL REPRESENTATIVE OF A DECEASED  
DEFENDANT

(Title)

To

WHEREAS the plaintiff\_\_\_\_\_instituted a suit in this  
Court on\_\_\_\_the\_\_\_\_ day of\_\_\_\_ 19 , against the defendant who has since deceased,  
and whereas the said plaintiff has made an application to this Court alleging  
that you are the legal representative of the said deceased, and desiring that  
you be made the defendant in his stead. You are hereby summoned to attend  
in this Court on the\_\_\_\_day of\_\_\_\_19, at\_\_\_\_\_a.m. to defend the said suit  
and in default of your appearance on the day specified, the said suit will  
be heard, and determined in your absence.

GIVEN under my hand and the seal of the Court, this\_\_\_\_day\_\_\_\_of  
\_\_\_\_19

Judge

SIND: The Local Amendment of Sind for Form No. I. Appendix  
B.

NO 7. ORDER OR TRANSMISSION OF SUMMONS FOR SERVICE  
IN THE JURISDICTION OF ANOTHER COURT

(Title)

WHEREAS it is stated that \_\_\_\_\_defendant/witness  
in the above suit is at present residing in \_\_\_\_\_ it is ordered that a summons  
returnable on the\_\_\_\_day of\_\_\_\_19 , be

forwarded to the\_\_\_\_ court of\_\_\_\_ for service\_\_\_\_\_ on the said defendant\_\_\_\_  
witness with a duplicate of this proceeding.

The court-fee of\_\_\_\_\_ chargeable in respect to the  
summons has been realized in this Court in stamps,

Dated 19

Judge

NO. 8. ORDERED FOR TRANSMISSION OF SUMMONS

TO BE SERVED ON A PRISONER

(Title)

The Superintendent of the Jail at\_\_\_\_\_

UNDER the provisions of Order V rule 24 of the Code of Civil Procedure 1908 a summons in duplicate is herewith forwarded for service on the defendant who is a prisoner in jail. You are requested to cause a copy of the said summons to be served upon the said defendant and to return the original to this Court signed by the said defendant, with a statement of service endorsed thereon by you.

Judge

NO. 9. ORDER FOR TRANSMISSION OF SUMMONS TO BE SERVED

ON A PUBLIC SERVANT OR SOLDIER.

(Title)

To

UNDER the provisions of Order V, Rule 27 (or 28 as the case may be) of the Code of Criminal Procedure, 1908 a summons in duplicate is herewith forwarded for service on the defendant\_\_\_\_ who is stated to be serving under you. You are requested to cause a copy of the said summons to be served upon the, said defendant and to return the original to this Court signed by the said defendant, with a statement of service endorsed thereon by you.

Judge

NO. 10 TO ACCOMPANY RETURNS OF SUMMONS OF

ANOTHER COURT

(Title)

Read proceeding from the\_\_\_\_\_ forwarding \_\_\_\_\_ for service on\_\_\_\_\_ in Suit No.\_\_\_\_of 19\_\_ of that Court.

Read Serving officer's endorsement stating that the\_\_\_\_\_  
and proof of the above having been duly taken by me on the oath of \_\_\_ and\_\_\_\_\_  
it is ordered that the \_\_\_\_\_be returned to the\_\_\_\_\_with a copy of this proceeding.

Judge

NOTE: This form will be applicable to process other summons, the service which may have to be effected in the same manner.

No. 11 AFFIDAVIT OF PROCESS TO ACCOMPANY RETURN  
OF A SUMMONS OR NOTICE

(Title)

The affidavit of \_\_\_\_\_ son of \_\_\_\_\_, I \_\_\_\_\_ make oath/affirm and say as follows:-

(1) I am a process-server of this Court.

(2) On the \_\_\_\_ day of \_\_\_\_ 19, received a summons notice issued by the Court of \_\_\_\_ in Suit No. \_\_\_\_ of 19 for service on \_\_\_\_.

(3) The said \_\_\_\_ was at the time personally known to me and I served the said summons/notice on him/her on the \_\_\_\_ day of \_\_\_\_ 19, at about \_\_\_\_ O clock in the \_\_\_\_ noon at \_\_\_\_ by tendering a copy thereof to him/her and requiring his/her signature to the original summons/notice.

(a)

(b)

(a) Here state whether the person served signed or refused to sign the process and in whose presence.

(b) Signature of process-server.

or

(3) The said \_\_\_\_ not being personally known to me \_\_\_\_\_ accompanied me to \_\_\_\_ and pointed out to me a person whom he stated to be the said \_\_\_\_ and I at about \_\_\_\_ O clock in the \_\_\_\_ non at \_\_\_\_ by tendering a copy thereof to him /her and requiring his/her signature to the original summons/notice.

(a)

(b)

(a) Here state whether the person served signed or refused to sign the process and in whose presence.

(b) Signature of process-server.

Or

(3) The said\_\_\_\_ and the house in which he ordinarily resides being personally known to me, I went to the said house, in\_\_\_\_ and thereon the \_\_\_\_ day of \_\_\_\_ 19 at about\_\_\_\_ O clock in the \_\_\_\_ noon, I did not find the said.

(a)

(b)

(a) Enter fully and exactly the manner in which the process was served, with special reference to Order 5 rule 15 & 17.

(b) Signature of process-server.

or.

(3) One\_\_\_\_ accompanied me to \_\_\_\_ and there pointed out to me\_\_\_\_ which he said was the house in which \_\_\_\_ ordinarily resides. I did not find the said \_\_\_\_ there.

(a)

(b)

(a) Enter fully and exactly the manner in which the process was served, with special reference to Order 5 rules 15 and 17.

(b) Signature of process-server.

or,

If substituted service has been ordered, state fully and exactly the manner in which the summons was served with special reference to the terms of the order for substituted service.

Sworn/Affirmed by the said\_\_\_\_ before me this\_\_\_\_ day of \_\_\_\_ 19,

Empowered under section 139 of time Code of Civil Procedure, 1908, to administer the oath to deponents.

LAHORE

Substitute the following form as amended:-

No. II. AFFIDAVIT OF PROCESS-SERVER TO ACCOMPANY RETURN  
OF A SUMMONS OR NOTICE

(Title)

The affidavit of \_\_\_ son of \_\_\_ I, make oath affirm  
and say as follows:-

(1) I am a process-server of this Court.

(2) On the \_\_\_ day of \_\_\_ 19, I received summons/notice  
issued by the Court of

of \_\_\_ in Suit No. \_\_\_ day of \_\_\_ 19, in the said Court dated the \_\_\_ day  
of \_\_\_ 19, for service on \_\_\_.

(3) The said \_\_\_ was at the time personally known to  
me and I served the said summons/notice on him/her on the \_\_\_ day of \_\_\_ 19,  
at about \_\_\_ o'clock in the \_\_\_ noon at \_\_\_ by tendering copy thereof to him/her  
and requiring his/her signature to the original summons/notice.

(a)

(b)

(a) Here state whether the person served, signed or  
refused to sign the process and in

whose presence.

(b) Signature of process-server.

Or

(3) The said \_\_\_ not being personally known to me \_\_\_\_\_  
accompanied to \_\_\_ and pointed out to me a person whom he stated to be the  
said \_\_\_ and I served the said summons/notice on him/her \_\_\_ on the \_\_\_ day  
of \_\_\_ 19, at about \_\_\_ O'clock in the \_\_\_ noon at \_\_\_ by tendering copy  
thereof to him/her and requiring his/her signature the original summons/notice.

(a)

(b)

(a) Here state whether the person served, signed or  
refused to sign the process and in whose presence.

(b) Signature of process-server

or

(3) The said \_\_\_ and his house in which he ordinarily resides being personally known to me/pointed out to me by \_\_\_ I went to the said house in \_\_\_ and there on the \_\_\_ day of \_\_\_ o'clock in the fore/after noon I did not find the said \_\_\_ I enquired

a)

b) Neighbors

I was told that \_\_\_ had gone \_\_\_ and would not be back till \_\_\_

Signature of process server.

Or

If substituted service has been ordered, state fully and exactly the manner in which the summons was served with special reference to the terms of the order for substituted service.

\_\_\_ before me this \_\_\_ day of \_\_\_ 19, .

Empowered under section 139 of the Code of Civil Procedure 1908 to administer the oath to deponents.

N.W.F.P

Substitute the following for the third and fourth parts of (3) in form No. 11:-

(3) The said \_\_\_ and his house in which he ordinarily resides being personally known to me/pointed out to me I went to the said house in \_\_\_ and there on the day of \_\_\_ 19, at about \_\_\_ o'clock in the fore/after noon, I did not find the said \_\_\_ I was told that \_\_\_ had gone to \_\_\_ and would not be back till \_\_\_.

Signature of Process server

NO. 12 NOTICE TO DEFENDANT

(Title)

WHEREAS this day was fixed for the hearing of the above Suit and a summons was Issued to you and the plaintiff has appeared In this Court and you did not so appear, but from the return of the Nazir it has been proved to the satisfaction of the Court that the said summons was served on you but not in sufficient time to enable you to appear and answer on the day fixed in the said summons;

Notice is hereby given to you that the hearing of the suit is adjourned this day and that the day of 19 is now fixed for the hearing of the same; in default of your appearance on the day last mentioned the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this\_\_\_\_  
day\_\_\_ of 19\_\_

Judge

No. 13 SUMMONS TO WITNESS

(Title)

To

WHEREAS your attendance is required to \_\_\_\_\_ on behalf of the \_\_\_\_\_ in the above suit, you are hereby required (personally) to appear this court on the day \_\_\_of\_\_\_ 19 ,

O'clock in the forenoon, and to bring with you (or to send to this \_\_\_ court).

A sum of Rs.\_\_\_\_ being your traveling and other expenses and subsistence allowance for one day, is herewith sent. If you fail to comply with this order without lawful excuse, you will be subject to the consequences of non-attendance laid down in rule 12 of Order XVI of the Code of Civil Procedure, 1908.

GIVEN under my hand and the seal of the Court, this  
\_\_\_day\_\_\_of\_\_19

Judge

NOTICE: (1) If you are summoned only to produce a document and not to evidence, you shall be deemed to have complied with the summons if you cause such document to be produced in this Court on the day and hour aforesaid.

(2) If you are detained beyond the day aforesaid,  
a sum of Rs.\_\_\_\_\_

will be tendered to you for each day's attendance beyond the day specified.

NO. 14. PROCLAMATION REQUIRING ATTENDANCE OF WITNESS

(Title)

To

WHEREAS it appears from the examination on oath of the serving officer that the summons could not be served upon the Witness in the manner prescribed by law and whereas it appears that the evidence of the witness is material, and he absconds and keeps out of the way for the purpose of evading the service of the summons This proclamation is therefore, under rule to Order of the Code of Civil Procedure, 1908, issued requiring the attendance of the witness In this court on to the day of \_\_\_ 19 , at \_\_\_ O'clock in the forenoon and from day to day until he shall have leave to depart; and if the witness fails to attend on the day and hour aforesaid he will be dealt with according to law.

GIVEN Under my hand and the seal of the Court this \_\_\_\_\_ day \_\_\_ of 19

Judge

NO. 15 PROCLAMATION REQUIRING ATTENDANCE OF WITNESS

(Title)

To,

WHEREAS It appears from the examination on oath of the serving office that (he summons has been duly served upon the witness, and whereas it appears that the evidence of the witness is material and he has failed to attend in compliance with such. summons This proclamation is therefore, under rule 10 of Order XVI of the Code of Civil Procedure, 1908, issued, requiring the attendance of the witness in this Court on the \_\_\_ day of \_\_\_ 19, at \_\_\_ O'clock in the forenoon and from day to day until he shall have leave to depart and if the witness fails to attend on the day and hour aforesaid he will be dealt with according to law.

GIVEN under my hand and the seal of the court this \_\_\_\_\_ day of \_\_\_ 19.

NO. 16 WARRANT OF ATTACHMENT OF PROPERTY OF

WITNESS

(Title)

To

The Bailiff of the Court.

WHEREAS the witness \_\_\_\_\_ cited by \_\_\_\_\_ has not, after the expiration of the period limited in the proclamation issued for his attendance, appeared in Court, you are hereby directed to hold under attachment \_\_\_\_\_ property belonging to the said witness to the value of \_\_\_\_\_ and to submit a return, accompanied with an inventory thereof, within \_\_\_\_\_ days.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ of \_\_\_\_\_ 19

#### NO. 17 WARRANT OF ARREST OF WITNESS

(Title)

To

The Bailiff of the Court.

WHEREAS \_\_\_\_\_ has been duly served with a summons but has failed to attend [absconds and keeps out of the way for the purpose of avoiding service of a summons]; you are hereby ordered to arrest and bring the said \_\_\_\_\_ before the Court.

You are further ordered to return this warrant on or before the \_\_\_\_\_ day of \_\_\_\_\_ 19 with an endorsement certifying the day on and the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of 19\_\_\_\_

Judge

#### NO. 18 WARRANT OF COMMITTAL

(Title)

To

The Officer in charge of the Jail at\_\_\_\_\_.

WHEREAS the plaintiff (or defendant) in the above-named suit has made application to his Court that security be taken for the appearance of \_\_\_\_\_ to give evidence (or to produce a document) on the \_\_\_\_\_ day of 19\_\_ and whereas the Court has called upon the said to furnish such security, which

he has failed to do; this is to require you to receive the said \_\_\_ into your custody in the civil prison and to produce him before this Court at \_\_\_ on the said day and on such other day or days as may be hereafter ordered.

GIVEN under my hand and the seal of the Court, this \_\_\_ day of 19\_\_.

NO. 19. WARRANT OF COMMITTAL

(Title)

To

The Officer in charge of the Jail at\_\_\_.

WHEREAS \_\_\_ whose attendance is required before this court in the above-named case to give evidence (or to produce a document) has been arrested and brought before the Court in custody; and whereas owing to the absence of the plaintiff (or defendant); the said cannot give such evidence (or produce such document); and whereas the Court has called upon the said \_\_\_ to give security for his appearance on the \_\_\_ day of 19\_\_ at which he has failed to do; this is to require you to receive the said into your custody in the civil prison and to produce him before this Court at \_\_\_ on the day of 19\_\_.

GIVEN under my hand and the seal of the Court, this \_\_\_ day of 19\_\_.

Judge

APPENDIX C

DISCOVERY, INSPECTION AND ADMISSION

NO.1. ORDER FOR DELIVERY OF INTERROGATORIES

In the Court of Civil Suit No. \_\_\_ of 19\_\_.

A. B. ... .. Plaintiff

against

C.D. E.F. and G. H. ... Defendants.

Upon hearing \_\_\_ and upon reading the affidavit \_\_\_ of \_\_\_ filed the \_\_\_ day of 19\_\_

It is ordered that the\_\_\_\_ be at liberty to deliver to the interrogatories in writing, and that the said\_\_\_\_ do answer the interrogatories as prescribed by Order XI, rule 8, and that the costs of this application be\_\_\_\_\_.

#### NO. 2 INTERROGATORIES

(Title)

Interrogatories on behalf of the above-named (plaintiff or defendant C. D.) for the examination of the above-named (defendant E.F. and G.H. or plaintiff).

1. Did not, etc.

2. Has not, etc. -

etc. etc. etc.

(The defendant E. F. is required to answer the interrogatories numbered).

(The defendant G.H. is required to answer the interrogatories numbered).

#### NO. 3 ANSWER TO INTERROGATORIES

(Title as in No. I supra)

The answer of the above-named defendant E. F. to the interrogatories for hi examination by the above-named plaintiff.

In answer to the said interrogatories I, the above named E. F. make oath and say as follows:-

1. Enter answers to interrogatories in paragraph numbered.

2. consecutively

3. I object to answer the interrogatories numbered\_\_\_\_on the ground that (state grounds of objection).

#### NO. 4. ORDER FOR AFFIDAVIT AS TO DOCUMENTS

(Title as in No. I supra)

Upon hearing\_\_\_\_ do within \_\_\_\_ days it is ordered that the\_\_\_\_do within\_\_\_\_days from the date of this order, answer on affidavit stating

which documents are or have been in his possession or power relating to the matter in question in this suit, and that the costs of this application be \_\_\_\_\_.

#### NO. 5 ORDER FOR AFFIDAVIT AS TO DOCUMENTS

(Title as in No. I supra)

I. the above-named defendant C. D. make oath and say as follows:-

1. I have in my possession or power the documents relating to the, matters in question in this suit set forth in the first and second parts of the first schedule hereto.
2. I object to produce the said documents set forth in the second part of the first schedule hereto [state grounds of Objection].
3. I have had but have not now my possession power the document relating to the matters in question in this suit set forth in the second schedule hereto.
4. The last-mentioned were lost in my possession or power an (state and what has become of them and in whose possession they now are].
5. According to the best of my knowledge, information and belief I have not now, and never had, in my possession, custody or power or in the possession, custody or power of my pleader or agent, or in the possession, custody or power of any other person on my behalf, any account, book of account, voucher, receipt, letter memo randum, paper or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suitor any of them, or wherein any entry, has been made relative to such matters or any of them, other than and except the documents set forth in the said first and second schedules hereto.

#### NO. 6 ORDER TO PRODUCE DOCUMENTS FOR INSPECTION

(Title as in No. I supra)

Upon hearing \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_ filed the \_\_\_ day of \_\_\_ 19, It is ordered that the \_\_\_\_\_ do at all reasonable times on reasonable notice, produce at \_\_\_\_\_ situate at \_\_\_\_\_ the following documents, namely \_\_\_\_\_ and that the \_\_\_\_\_ be at liberty to inspect and peruse the documents so produced and to make notes of their contents. In the meantime it is ordered that all further proceedings be stayed and that the costs of this application be \_\_\_\_\_.

## NO 7. NOTICE TO PRODUCE DOCUMENTS

(Title as in No. I supra)

Take notice that the [plaintiff or defendant] requires you to produce for his inspection the following documents referred to in your [plaint or written statement or affidavit, dated the \_\_\_ day of 19\_\_.

[Describe documents required]

(X.Y. Pleader for the

To Z. Pleader for the

## NO. 8 NOTICE TO INSPECT DOCUMENTS

(Title as in No. I supra)

Take notice that you can inspect the documents mentioned in your notice of the \_\_\_ day of 19\_\_ [except the documents numbered \_\_\_ in that notice) at [insert place of Inspection) on \_\_\_ Thursday next, the \_\_\_ instant between the hours of 12 and 4 O'clock.

Or, that the [plaintiff of defendant) objects to giving you inspection of documents mentioned in your notice of the \_\_\_ day \_\_\_ 19, on the ground that (state the ground):-

## NO. 9 NOTICE TO ADMIT DOCUMENTS

(Title as in No. I supra)

Take notice that the plaintiff (or defendant) in this suit, proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [or plaintiff], his pleader or agent, at \_\_\_ on \_\_\_ between the \_\_\_ hours of \_\_\_ and the defendant [or plaintiff) is hereby required within forty-eight hours from the last mentioned hour to admit. that such of the, said documents, as are specified to be originals were respectively written signed or executed as they purport respectively to have been , that such as are specified as copies are true copies . and such documents as are stated to have been served, sent or delivered was so served sent or delivered were so served, sent or delivered, respectively, saving all just exceptions to the admissibility of all such documents as evidence in this suit

G. H. Pleader [or agent] for plaintiff (or defendant):

To E. F., pleader (or agent for defendant).

(here describe the documents and specify as to each document whether it is original or a copy)

#### NO. 10. NOTICE TO ADMIT FACTS

(Title as in No. I supra)

Take notice that the plaintiff [or defendant] in this suit requires the defendant [or plaintiff] to admit, for the purposes of this suits only, the several facts respectively hereunder specified; and the defendant [or plaintiff] is hereby required, within six days from the service of this notice, to admit the said several facts, saying all just exceptions to the admissibility of such facts as evidence in this suit.

G. H. pleader [or agent] for plaintiff (or defendant)

To E.F, pleader [or agent] for defendant [or plaintiff].

The facts, the admission of which is required, are:-

1. That M died on the 1st January, 1890.
2. That he died intestate.
3. That N was his only lawful son.
4. That O died on the 1st April, 1996.
5. That O was never married.

#### NO. II; ADMISSON OF FACTS PURSUANT TO NOTICE

(Title as in No. 1 supra)

The defendant (or plaintiff) in this suit, for the purposes of this suit only, hereto admits the several facts respectively hereunder specified subject to the qualifications or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of any such facts, or any of them, as evidence in this suit:

Provided that this admission is made for the purposes of this suit only, and is not an admission to be used against the defendant [or plaintiff] on any other occasion or by any one other than the plaintiff (or defendant, or party requiring the admission).

E. F. pleader (or agent) for defendant (or plaintiff)

To G, H., pleader [or agent] for plaintiff [or defendant).

NO. 12 NOTICE TO PRODUCE (GENERAL FORM)

(Title as in No. I supra)

Take notice that you are hereby required to produce and show to the Court at the first hearing of this suit all books, papers, letters, copies of letters and other writing and documents. In your custody, possession or power containing any entry, memorandum or minute relating to the matters in question in this Suit, and particularly.

G. H. pleader [or agent] for plaintiff (or defendant)

To E. F. pleader [or agent for defendant it (or plaintiff)

APPENDIX D

DECREE

NO. 1 DECREE IN ORIGINAL SUIT

(Title)

Claim for \_\_\_\_.

This suit coming on this day for final disposal before\_\_\_\_ in the presence\_\_\_\_ for the plaintiff and of\_\_\_\_ for the defendant, it is ordered and decreed that\_\_\_\_ and that the sum of Rs.\_\_\_\_ be paid by the \_\_\_\_ to the \_\_\_\_ on account of the costs of this suit, with interest thereon at the rate of per cent \_\_\_\_ per annum from this date to date of realization.

GIVEN under my hand and the seal of the court, this \_\_\_\_ day of \_\_\_\_ 19

Judge

Costs of Suits

NO. 2. SIMPLE MONEY DECREE (Section 34)

(Title)

Claim for\_\_\_\_\_

This suit coming on\_\_\_\_ this day for final disposal before in the presence of\_\_\_\_ for the plaintiff and of\_\_\_\_ for the defendant,

it is ordered that the \_\_\_ do pay to the \_\_\_ the sum of Rs. \_\_\_\_ with interest thereon at the rate of \_\_\_per cent per annum from\_\_\_

to the date of realization of the said sum and do also pay Rs. \_\_\_\_ the costs of this suit, with interest thereon at the rate of\_\_\_\_ per cent per annum from this date to the

date of realization.

GIVEN under my hand and the seal of the Court, this\_\_\_\_  
day of 19

Judge

### NO. 3 PRELIMINARY DECREE FOR FORECLOSURE

Order XXXIV rule, 2 –(Where accounts are directed to be taken)

(Title)

This suit coming on this\_\_\_\_ day. etc. It is hereby ordered and decreed that it be referred to \_\_\_as the Commissioner to take the accounts of following:-

(1) an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent per annum or at such rate as the Court deems reasonable);

(ii) an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order or for the use of the plaintiff or which without the willful default of the plaintiff or such person might have been so received;

(iii) an account of all sums of money properly incurred by the plaintiff up to this date for, co charges and expenses (other than the costs of the suit) in respect of the mortgage-security, together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing such rate at the same rate as is payable on the principal, or falling both such rates, at nine per cent per annum);

(iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being force or by the terms of the mortgage-deed.

2. And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted against any sums paid by the plaintiff under clause (iii) together with interest thereon, and the balance, if any shall be added to the mortgage money or, as the case may be, debited in reduction of the amount to the plaintiff on account of interest on the principal sum adjusted due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commission shall present the amount to this Court with all convenient despatch after making all just allowances on or before the \_\_\_ day of \_\_\_ and that upon such report of the Commissioner being received, it shall be confirmed and counter signed, subject to such modifications as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed-

(i) that the defendant do pay into Court on or before the day of \_\_\_ or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due, and the sum of Rs. \_\_\_ for the costs of the suit awarded to the plaintiff.

(ii) that on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule together with such subsequent Interest as may be payable under rule II of Order XXXIV of the first schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all encumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall if so required, deliver up to quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default, of payment as aforesaid, the plaintiff shall be at liberty to apply to the Court for a final decree that the defendant shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property, and that the parties shall at liberty to apply to Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

## SCHEDULE

### NO. 3A. PRELIMINARY DECREE FOR FORECLOSURE

(Order XXIV, rule 2 -Where the Court declares amount due)

(Title)

This suit coming on this\_\_ day etc. It is hereby declared that the amount due to the plaintiff on his mortgage mentioned in the plaint calculated up to this\_\_ day of\_\_as the sum Rs.\_\_\_\_ for the sum of Rs.\_\_\_\_ for principal, the sum of Rs.\_\_\_\_ for interest on the principal, the sum of Rs. \_\_\_\_ for costs charges and expenses (other than the costs of the suit property incurred by the plaintiff in respect of the mortgage security, together with interest thereon, and the sum of Rs. \_\_\_\_ for the costs of the suit awarded to the plaintiff, making in all the sum of Rs. \_\_\_\_.

It is hereby ordered and decreed as follows:-

That the defendant do pay into court on or before the \_\_\_\_ day of \_\_\_\_ or any later date up to which time for payment may be extended to the court of the said sum of Rs. \_\_\_\_.

(ii) that on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs, of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent Interest as may be payable under rule II., of Order XXXIV of the First Schedule to Code of the Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all encumbrances created by the plaintiff or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall if so required, deliver up to the defendant quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that in default of payment as aforesaid the plaintiff may apply to the Court for a final decree that the defendant shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged -property in the Schedule annexed hereto and shall if so required, deliver up to the plaintiff quiet and peaceable pos of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

## SCHEDULE

Description of the mortgage property

No. 4 FINAL DECREE FOR FORECLOSURE

(Order XXXIV, rule 3)

(Title)

Upon reading the preliminary decree passed in this suit on the \_\_\_\_ day of \_\_\_\_ and further orders (if any) dated the \_\_\_\_ day of \_\_\_\_ and the application of the plaintiff dated the \_\_\_\_ day of \_\_\_\_ for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the defendant or any person on his behalf or any other person entitled to redeem the said mortgage;

It is hereby ordered and decreed that the defendant and all, persons claiming through or under him be and they are hereby absolutely debarred and foreclosed of and from all right of redemption of and in the property in the aforesaid preliminary decree mentioned; (if the defendant be in possession of the said mortgaged property that the defendant shall deliver to the plaintiff quite and peaceable possession of the said mortgaged property.

2. And it is hereby further declared, that the whole of the liability whatsoever of the defendant up to this day arising from the said mortgage mentioned in the plaint or from this suit is hereby discharged and extinguished.

No 5 PRELIMINARY DECREE FOR SALE

(Order XXXIV, rule 4 -Where accounts are directed to be taken)

(Title)

This suit coming on this \_\_\_\_ day, etc , it is hereby ordered and decided that it be referred to \_\_\_\_ as the Commissioner to take the accounts following:

(i) an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the plaint (such interest be computed at the rate payable on the principal or where no such rate is fixed, at six per cent. per annum or at such rate as the Court deems reasonable);